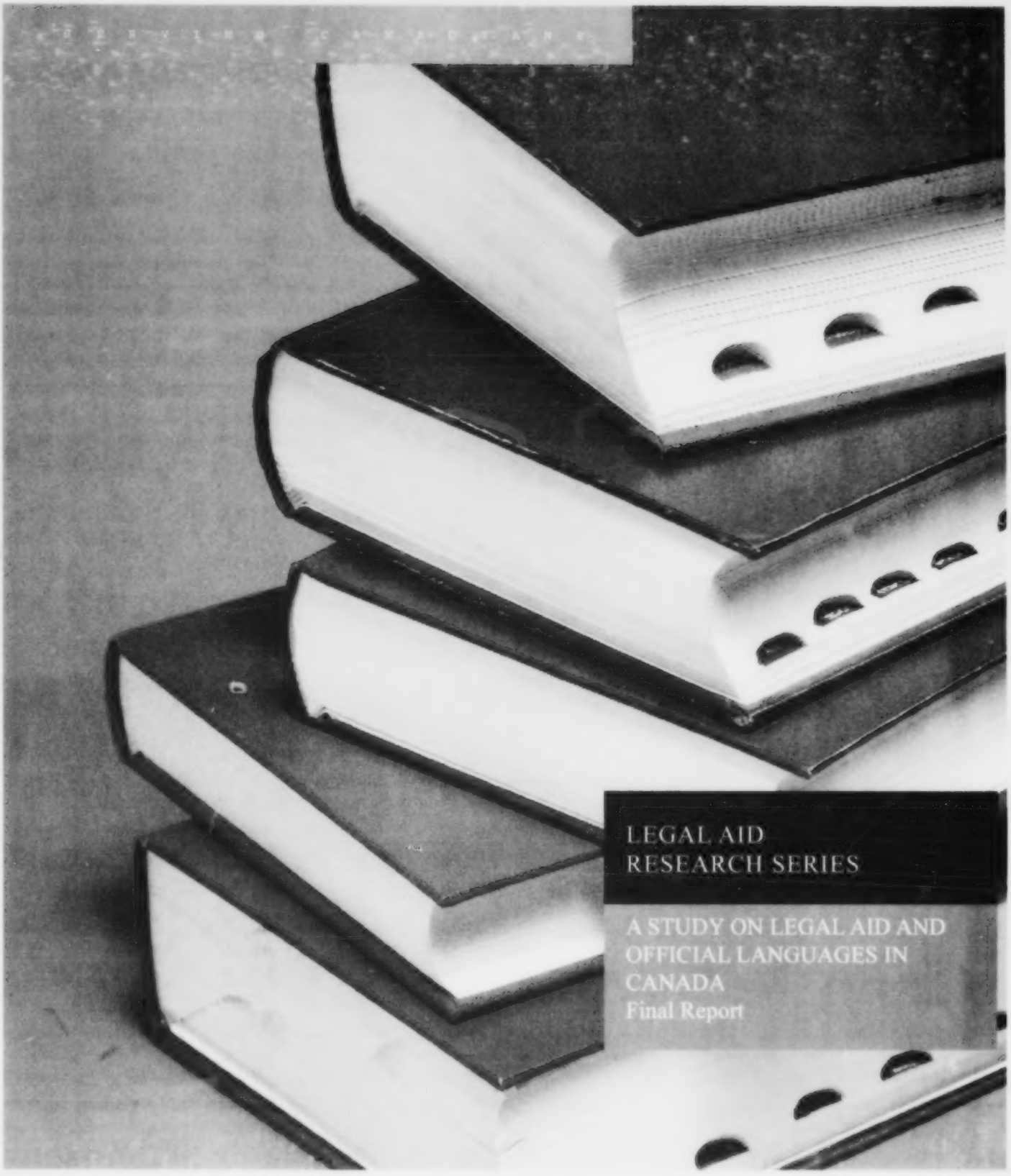

LEGAL AID
RESEARCH SERIES

A STUDY ON LEGAL AID AND OFFICIAL LANGUAGES IN CANADA

Final Report

Department of Justice Canada
Ministère de la Justice Canada

Canada

A STUDY ON LEGAL AID AND OFFICIAL LANGUAGES IN CANADA

Final Report

PRA Inc.
Information
Info Strategy

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Department of Justice Canada

Programs Branch

Research and
Statistics Division

May 2002

The views expressed in this report are those of the authors and do not necessarily reflect the views of the Department of Justice Canada.

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EXECUTIVE SUMMARY

Legal aid services in Canada support a greater access to the justice system by providing legal assistance to those who cannot afford the cost of legal counsel. Just as poverty constitutes a barrier to justice, language may also represent an obstacle to equal access to the justice system. Consequently, and in accordance with the principles of natural justice, there is an obligation to provide interpreters to any party or witness, in any legal proceedings, who does not understand or speak the language in which the proceedings are held. Furthermore, the presence of two official languages in Canada creates additional rights and obligations that go beyond the requirements of natural justice. A number of constitutional and legislative provisions, such as the right to access criminal courts in either official language (section 530 of the *Criminal Code*), have addressed the equality of English and French throughout Canada and the Canadian justice system. The provision of bilingual services by legal aid plans may therefore represent an important bridge between low-income clients and their equal access to justice. The Department of Justice Canada initiated this research project in order to:

- identify the policies and practices in effect within provincial legal aid plans to ensure access to services in the official language of choice;
- identify any difficulties in accessing legal aid services in the official language of choice; and
- determine, if necessary, the increased levels of service required to meet adequate standards of service as well as the cost of the increased level of service.

Methodology

While the focus of the study is primarily on the provision of legal aid services in the area of criminal law, additional areas of law have also been included, such as family and other civil matters. The scope of this study is limited to legal aid services in the ten provinces and does not include the three territories, which are the object of a separate study on legal aid. The methodology adopted to examine these research issues consists of four main tasks:

- *Literature review*: a review of documentation describing the legal aid services offered in each province of Canada, documents describing linguistic profiles within each province, Legal Aid Acts, provincial linguistic legislation, the *Canadian Charter of Rights and Freedoms*, the *Criminal Code*, relevant case law, and literature on legal aid services and linguistic rights in Canada.
- *Site visits*: visits to six provinces (Nova Scotia, New Brunswick, Québec, Ontario, Manitoba, and Alberta) where in-person and telephone interviews were conducted with various key informants including legal aid directors and staff, private lawyers, Crown, judiciary, community organizations, court services, and child and family services.
- *Key informant interviews*: telephone interviews with key informants in those provinces not visited (Newfoundland and Labrador, Prince Edward Island, Saskatchewan, and British Columbia).

- *Client survey*: a random telephone survey within each province visited (Nova Scotia, New Brunswick, Québec, Ontario, Manitoba, and Alberta), targeting those areas with a significant concentration of people who speak the official language of the minority.[1]

Linguistic dimensions of legal aid

Parliament has demonstrated a commitment to supporting official language minorities and promoting the equal status of English and French throughout Canada. Various constitutional and legislative provisions, such as those contained in the *Canadian Charter of Rights and Freedoms* and the *Criminal Code*, touch upon the issue of official languages as they relate to matters that fall under federal jurisdiction. In addition, some provinces have established policies or legislation governing the provision of government services in both official languages.

The Charter establishes English and French as the official languages of Canada and states that either official language may be used before any court established by Parliament. Furthermore, any individual unable to understand or speak the language in which court proceedings are held has the right to the services of an interpreter.

Whereas the Charter addresses the issue of language generally, the *Criminal Code* deals specifically with the issue of language in the context of criminal proceedings, creating an absolute right of an accused to use either official language in designated courts. The Supreme Court of Canada has stated that section 530 of the *Criminal Code* invokes the need for "institutional bilingualism," where courts that deal with criminal matters must maintain the capacity for equal use of English and French. In addition, the Supreme Court has specified that the purpose of such a provision is to recognize and be responsive to an individual's linguistic and cultural identity, thereby making a person's ability to speak and understand the language of the majority irrelevant.

Since legal aid plans fall under provincial jurisdiction, such federal provisions do not create a strict obligation for legal aid plans to offer services in both official languages. However, this provision and, just as importantly, the interpretation given to it by the Supreme Court of Canada create external pressures on legal aid plans to provide legal aid services in the two official languages.

There are several service delivery principles to consider in the development of policies and practices relating to official languages. Extensive research in the field has led to the general acceptance of the following principles as constituting good practice in the field of official languages service delivery:

- Informing the public that services are available in both official languages, through an active offer of services.

- Ensuring that quality services are available in both official languages throughout the various service delivery methods (e.g., Internet, information line, written material).

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[1] PRA had originally planned to conduct interviews with legal aid clients during the site visits; this was not feasible, as difficulties arose in recruiting clients for participation.

- Taking into account issues of recruitment of staff, training, and professional development opportunities for employees in the consideration of the overall capacity of an organization to offer services in the two official languages.

Legal aid plans offer a wide range of legal services – information services, *Brydges* representation, duty counsel services, and full representation in court – each unique in its purpose, organization, and delivery structure. While the provision of legal aid services in the official language of the minority must incorporate the above principles, service delivery must also be adapted to the particular characteristics of each type of assistance provided by legal aid.

- ***Brydges* representation**: According to the Supreme Court of Canada decision in *R. v. Brydges*, legal representation must be available immediately to any person arrested or detained, 24 hours a day, seven days a week. Provinces have adopted a number of delivery structures to ensure conformance with the requirements of this ruling.

  The decisions that must be made by a person at this early stage in the process can have significant impacts on a number of issues related to the case, and, in this context, the ability of an accused to speak in his or her own official language is conducive to good decision-making. However, the challenges to providing this service in both official languages are significant. The immediacy required by this type of representation makes it difficult to respond to such a request on an *ad hoc* basis.

- **Duty counsel services**: Duty counsel services are generally available to accused persons upon their first appearance in court. The provinces impose their own conditions on the use of this service; some jurisdictions offer duty counsel only to those in custody, and others require that the applicant meet the financial eligibility criteria. In any case, duty counsel services are perceived by many as being one of the most important services available through legal aid since the first appearance can indeed have lasting effects on a person's right to life, liberty, and security.

  Legal counsel assist the accused with obtaining pre-trial release and in deciding on an appropriate plea. The choice of plea requires extensive legal expertise as it largely depends on the existence of a valid defence. The decision must be an informed one because entering the wrong plea can have damaging consequences. The challenge, in terms of duty counsel services, is that these lawyers deal with an exceptionally high volume of cases and are required to work within restricted time frames. The ability of the lawyer to communicate easily and efficiently with the accused is, therefore, crucial. As with *Brydges* representation, the immediate nature of the service poses specific challenges in terms of provision in both official languages.

- **Trial representation**: A person without a lawyer may apply to legal aid for legal representation at trial. This service is provided through a staff model or a judicare model, depending on the jurisdiction. The value of trial representation, as with other services provided by legal aid, is in the capacity of the lawyer to interpret the law for the accused, represent the interests of the accused, and present the accused with all available options. A lawyer's capacity to speak and understand the official language with which the client is most comfortable will improve the effectiveness of representation.

Unlike *Brydges* and duty counsel representation, trial representation in the official language of the minority is more easily organized on an *ad hoc* basis. Nevertheless, there are some important challenges that arise, such as the availability of lawyers who speak the language of the minority, who practise criminal law and are willing to work for or accept legal aid certificates; and who have a lawyer's knowledge of the technical and specialized terminology required to conduct a trial in the official language of the minority.

The complex nature of the law and the adversarial system in which the Canadian justice system operates requires effective communication between a lawyer and client at all stages of the process. An individual must be clear on procedures, processes, and the law itself. The ability of a person to instruct counsel rests on his or her comprehension of the issues at hand, thereby making effective communication an essential component of all interactions between legal professionals and clients.

Findings from the jurisdictions

Minority official language groups represent a small percentage of the overall population in most Canadian provinces – from 0.5 percent in Newfoundland and Labrador to 9.4 percent in Québec. New Brunswick stands somewhat apart, as the Acadian and francophone community constitutes a third of its population, and as the two languages and the two linguistic communities have equal constitutional status in that province. In addition, 1996 Census data indicate that the number of people who have a minority official language as a mother tongue is generally decreasing – with the exceptions of Prince Edward Island and Ontario, where the numbers have remained relatively stable throughout the years, and New Brunswick and British Columbia, where the numbers are increasing. Consequently, access to legal aid services in the official language of the minority varies across jurisdictions.

Constitutional and legislative provisions that are in place within each province also have an impact on the availability of legal aid services in the official language of the minority. While most legal aid plans are not required to provide their services in both official languages, the policy environment in which they operate may create an incentive to provide services in both official languages:

- The use of both official languages in all courts is a constitutional right in New Brunswick, Québec, and Manitoba, and a legislative right in Ontario, Saskatchewan, and Alberta.
- Federal legislation requires that an accused have access to a criminal trial in either official language.
- Legislation in Prince Edward Island, New Brunswick, and Ontario requires the provision of legal aid services in both official languages, and Manitoba has a government policy regarding the provision of legal aid services in the official language of the minority.

In addition to differing constitutional and legislative obligations, the provinces have adopted different structures for the delivery of legal aid services: New Brunswick and Ontario have adopted a judicare model; Newfoundland and Labrador, Prince Edward Island, Nova Scotia,

Manitoba, and Saskatchewan have adopted a primarily staff model; and Québec, Alberta, and British Columbia operate on a mixed model (both staff and judicare). Depending on the service delivery structure, legal aid plans have varying degrees of control over their capacity to offer their services in both official languages.

In the absence of formal policies or legislation regarding the provision of services in the official language of the minority, informal policies are in place within most legal aid systems. Generally, legal aid will attempt to provide services in the official language of choice upon request by a client. The ease with which a legal aid system can accommodate such a request depends in part on the type of service requested and on the availability of staff or private bar lawyers who speak the official language required.

- Most legal aid plans will attempt to provide full representation in the official language of the minority on an *ad hoc* basis. In most cases, legal aid will issue a certificate to a bilingual lawyer in private practice.

- Legal aid plans also attempt to provide some duty counsel services and *Brydges* representation in the official language of the minority; however, these two areas pose particular challenges because of the immediacy of the service required. With the exception of New Brunswick, Québec, and Ontario, these services are essentially non-existent in the official language of the minority.

Overall, New Brunswick, Québec, and Ontario are the only provinces with a significant capacity to offer legal aid services in both official languages. Other provinces have a more limited capacity, yet many feel that it is sufficient due to the low demand for services in the official language of the minority.

Key informants point to some important considerations when organizing and planning for the provision of legal aid services in the official language of the minority. These include:

- A lawyer's capacity to communicate in the official language of the minority does not translate into the capacity to conduct a trial in that language. There is a significant difference between the skills required for each; many lawyers with some bilingual capacity may not be willing to represent a client formally in the official language of the minority.

- In some provinces, particularly Saskatchewan, Alberta, and British Columbia, other languages are more prevalent than the official language of the minority. For this reason, providing legal aid services in both official languages is not considered a priority, putting the minority official language group in a status that is largely comparable to that of any other language that is not the majority language.

- Most legal aid plans expressed difficulties with the provision of services generally, regardless of the language issue. Resources are thinly spread, making it difficult to invest in the provision of services in both English and French.

- The French language has historically evolved differently in Acadian communities than in other areas across the country, thereby making it increasingly difficult to ensure that a

lawyer or any Legal Aid staff member can effectively communicate with a client, despite the fact that they are speaking the same language.

Aside from these key considerations, a number of barriers may prevent the provision of legal aid services in the official language of the minority. With regard to legal aid clients, barriers occur at the active offer of services.

- There is, typically, no active offering of services in the official language of the minority, thereby reducing the demand for such services. Legal aid clients generally are not aware that they can have access to services in their official language of choice and therefore do not request them. Survey findings indicate that respondents consider it important to have a lawyer speak to them in their first language. However, nearly half of both groups (anglophones and francophones) indicate a willingness to proceed in court in the official language of the majority as long as the lawyer representing them has the capacity to communicate in their preferred official language.

- The justice system is intimidating to most individuals, and, therefore, many are not comfortable with making a request for services in the official language of the minority. In addition to a lack of active offer within legal aid plans, many key informants indicate that the justice system as a whole does not encourage the use of the official language of the minority. This represents an important barrier to consider because, as demonstrated by the survey of clients and potential clients, nearly all anglophone respondents indicate a preference for a trial in English.

In addition, there are a number of organizational barriers to the provision of legal aid services in both English and French, depending on the delivery model and the type of service being offered.

- Legal aid plans that operate on a judicare model rely on the willingness of bilingual lawyers in the private bar to accept legal aid certificates. In reality, many bilingual lawyers tend not to do legal aid work or may not work in fields such as criminal law where the need for bilingual services may be particularly significant. Furthermore, many bilingual lawyers may be discouraged from accepting legal aid cases in the official language of the minority because of a lack of support (bilingual paralegals, secretaries, etc).

- In a staff model, legal aid plans often experience difficulties recruiting and maintaining bilingual lawyers and other staff (paralegals, secretaries, etc). These individuals often move toward more lucrative positions in the private sector or in other government departments. Consequently, many legal aid plans will issue certificates to bilingual members of the private bar when a request is made for services in the official language of the minority. The barrier then becomes locating a bilingual lawyer who is willing to accept a legal aid certificate.

- Duty counsel services are more challenging to provide in both official languages because they are high volume in nature and are generally provided in all criminal court locations (some jurisdictions offering the service in family and youth court as well). Consequently, many jurisdictions concentrate their efforts to provide these services in both languages in areas where official minority language groups are more prominent, rather than attempting to ensure the availability of bilingual services in areas where the demand is low.

- *Brydges* representation elicits many of the same concerns as those associated with duty counsel representation. Generally, *Brydges* representation is provided over the telephone and involves a rotation of available lawyers. In this respect, the willingness of bilingual lawyers to provide the service plays a crucial role in the availability of the service in the official language of the minority. The one scenario in which the delivery of *Brydges* services in the official language of the minority may prove easier is where the service is centralized through a toll-free number available from all across the province.

  As indicated by numerous key informants, police departments play a pivotal role in ensuring that clients requesting the service are made aware of the availability of bilingual lawyers. Police officers are often the first point of reference for individuals who require the services of legal aid, and an active offer at this stage can have significant impacts on meeting the language needs of legal aid clients.

While many factors influence the provision of legal aid services in the official language of the minority, legal aid plans are limited in their ability to address some of them. For instance, a legal aid plan may decide to actively offer its services in the official language of the minority, but may not be able to find bilingual lawyers who are willing to do legal aid work.

Key informants identified a number of strategies that can be developed to improve or expand the provision of legal aid services in the official language of the minority. These can be organized into three categories:

Strategies aimed at issues that have a direct impact on legal aid clients

- Increased availability of public information materials in the official language of the minority (publications, brochures, posters, etc) to ensure that members of official language minority groups have access to basic information on legal aid services, regardless of the capacity of provincial plans to provide services in both official languages.

- Increased understanding of the language needs of official language minorities by the key players in the criminal justice system who first encounter an accused person, and who may have a significant impact on his or her access to justice.

- Increased understanding by criminal justice professionals throughout the system (police, lawyers, Crown, judiciary, and Legal Aid staff) of the importance of services being made available in both official languages.

Strategies aimed at issues relating to the ability of legal aid plans to offer services in both official languages

- Enhanced opportunities for language training provided to lawyers who have a basic knowledge of the minority official language but who are unfamiliar with the legal terminology required to provide services in that language – both oral and written.

- Enhanced opportunities for language training provided to paralegals, legal secretaries, and others who support lawyers in their work.

- Availability of appropriate resources and tools that will enable legal aid plans and lawyers to provide services in the official language of the minority, including reference materials and publications, computer software, etc.

- Recognition of the role that various *Associations des juristes d'expression française* and other francophone community organizations can play in the expansion of French legal aid services outside Québec. The development of a solid working relationship with these associations could facilitate the provision of services in French, and encourage clients and potential clients to request services in their first language.

  Recognition of the role that the extensive network of anglophone organizations within Québec can play in the improvement and expansion of English legal aid services.

Strategies aimed at issues regarding the legal aid system as a whole

- Increased salaries for Legal Aid staff lawyers may facilitate the recruiting and maintaining of bilingual staff in some jurisdictions. Legal aid work, compared to other areas of law, is not financially rewarding – bilingual lawyers may benefit from higher salary ranges within provincial prosecutions (Ontario), within the private sector, or within other provincial ministries or federal departments (including federal prosecutions).

- Increased tariffs for lawyers in the private bar who accept legal aid certificates. Tariffs that are perceived as being too low may discourage lawyers, including bilingual lawyers, from doing legal aid work.

While some impediments to the provision of legal aid services in both official languages cannot be addressed through additional resources, others can, indeed, be overcome. The overall findings of the study lead to the conclusion that federal funding can be targeted in two ways:

- Toward those issues directly related to the capacity of legal aid plans to offer services in both official languages, such as language-training initiatives, publication and dissemination of materials in the two official languages, and the development of legal resources and tools in both official languages. In addition, the federal government can contribute to initiatives that are aimed at sensitizing criminal justice professionals to the needs of official language groups, as well as encouraging collaboration between community organizations and associations that work in the field of official language issues.

- Toward those issues that relate to the entire legal aid system, such as the tariff structure and the remuneration of staff lawyers. These institutional barriers can have a definite impact on the provision of services in the official language of the minority.

1.0 Introduction

Although the fundamental principles of justice do not relate specifically to "official languages," a number of constitutional and legislative provisions have considered them.

Legal aid services across Canada share a common purpose, which is to support greater access to the justice system. From the moment of arrest to full representation in courts, legal aid services are intended to be available for those who cannot afford the cost of counsel. The existence of these legal aid services supports the principles of justice by ensuring a greater level of fairness in the justice system.

The issue of *language* adds a complex yet fundamental dimension to legal aid. Just as poverty may constitute a barrier to fair access to the justice system, so language may impede full access to justice. As a result, there is an obligation to provide interpreters to any party or witness in any legal proceedings who does not understand or speak the language in which the proceedings are conducted. In the context of the fundamental principles of natural justice,[2] in which every person is equal before the law, no distinctions are made between "official languages" and other languages.

In Canada, the presence of two official languages adds a series of rights and corresponding obligations in addition to any considerations of natural justice. Constitutional and legislative provisions have addressed the equality of English and French throughout Canada. An example of one of these provisions is section 530 of the *Criminal Code*, which provides for the right to access criminal courts in either official language.

The ability to obtain legal representation in his or her own official language may affect a person's ability to fully exercise his or her linguistic rights – and, as a potential consequence, any of his or her *other* legal rights - as they relate to criminal court proceedings. Therefore, the provision of bilingual services by legal aid may represent an important bridge between low-income clients and their access to justice.

Policies and practices across the various legal aid systems in Canada differ substantially. This study explores the experience of these legal aid organizations in providing services in the two official languages.

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2 The notion of "natural justice" generally refers to procedural fairness. As stated by the Supreme Court of Canada in *R. v. Jones* [1986] 2 S.C.R. 284, this concept imposes an obligation on courts and tribunals to *"act fairly, in good faith, without bias and in a judicial temper, and must give [a person] the opportunity to adequately state his case."*

1.1 Purpose of the study

The Department of Justice has identified three specific research objectives in relation to legal aid services and official language groups:

1) To identify the policies and practices in effect within legal aid plans to ensure that French or English speakers have access to service in the language of their choice.

2) To identify any difficulties that French and English speakers have in accessing legal aid services.

3) To determine, if necessary, the increased levels of service required to meet adequate standards of service, and the cost of those increased levels of service.

To assist in addressing these research objectives, the Department developed a series of questions, which are included in Table 1.

Table 1: Research questions
1. What policies do legal aid plans have in place relating to servicing inquiries and applications, and providing service in the official language of choice?
2. To what aspects of service do the policies apply? (Frontline reception, duty counsel for in-custody and non-custody clients, advice and assistance, representation at trial?)
3. Are there other services (information line, Internet) offered in the official language of choice?
4. To what extent are official language groups unable to access various legal aid services in their language of choice?
5. What steps do they need to take to obtain service in the language of their choice?
6. What are the possible consequences of not providing services in the language of choice?
7. What are the key barriers that may prevent the provision or expansion of legal aid services in the language of choice?
8. Which service areas (e.g., *Brydges* representation, duty counsel) should be targeted for an expansion of services offered to linguistic minorities?
9. Based on the legal aid delivery model in place (judicare, staff lawyers, or mixed model), what unique challenges exist in order to provide an expansion of legal aid services offered in the language of the minority?
10. What is the cost estimate of implementing new legal aid services in the language of the minority?

The scope of this study is limited to legal aid services in the ten provinces and does not include the three territories, whose legal aid services are the object of a separate study. While this study predominantly addresses legal aid services related to criminal law, it also includes family and other civil matters.

1.2 Methodology

Table 2 summarizes the methodology adopted to complete this study.

Table 2: Methodology

Method	Data sources
Literature review[3]	Prairie Research Associates (PRA) Inc. reviewed documentation describing the legal aid services offered in each province of Canada and documents describing linguistic profiles within each province. In addition, we consulted primary sources such as provincial Legal Aid Acts, provincial linguistic legislation, the *Canadian Charter of Rights and Freedoms* and the *Criminal Code*. PRA consulted jurisprudence and literature pertaining to legal aid services and linguistic rights in Canada. (See bibliography for complete list of documents.)
Site visits	PRA visited six sites and conducted in-person and telephone interviews. Key informants included legal aid directors and staff, private lawyers, Crown, judiciary, community organizations, court services, and child and family services. Site visits included: • Nova Scotia (n=10 interviews) • New Brunswick (n=18 interviews) • Ontario (n=10 interviews) • Manitoba (n=11 interviews) • Alberta (n=11 interviews) • Québec (n=16 interviews).
Key informant interviews	In the four provinces we did not visit, we conducted telephone interviews with legal aid directors and staff, private lawyers, Crown, judiciary, and community organizations: • Newfoundland and Labrador (n=6 interviews) • Prince Edward Island (n=5 interviews) • Saskatchewan (n=4 interviews) • British Columbia (n=6 interviews).
Interviews with legal aid clients	PRA had originally planned to conduct interviews with legal aid clients during the site visits. This method did not prove feasible as we encountered difficulties recruiting clients for the interviews. As an alternative approach, we conducted a random telephone survey within each province visited (Nova Scotia, New Brunswick, Québec, Ontario, Manitoba, Alberta). Those areas with an important concentration of people who speak the official language of the minority were targeted. A total 125 surveys were completed between April 18, 2002 and April 23, 2002; 24 in Québec and 101 in the remaining five provinces.

[3] For the complete list of documents consulted, please refer to the bibliography.

1.3 Structure of the report

Our report has five sections, including the introduction (Section 1). Section 2 introduces a number of linguistic considerations that set the broader context in which legal aid services operate. We briefly review the relevant legislative provisions, explore some of the characteristics of service delivery in the language of the minority, and discuss some linguistic dimensions specific to legal aid services. Section 3 presents the findings from each province, and Section 4 summarizes the findings from the client and potential client telephone survey. Section 5 provides a summary of all findings including key issues and considerations.

2.0 The linguistic dimensions of legal aid

The linguistic dimensions of legal aid services relate to the principles of natural justice and, in the case of the two official languages, a general commitment to support official language minorities and promote the equal status of English and French. This section briefly reviews these contextual elements.

2.1 Legislative context

2.1.1 Canadian Charter of Rights and Freedoms

The Charter establishes two legal rights that are particularly relevant for this study. Section 10 states:

> *" Everyone has the right on arrest or detention (...)*
>
> *b) to retain and instruct counsel without delay and to be informed of that right."*

The right to counsel upon arrest and detention often represents the first contact of an accused with legal aid services and requires close collaboration of police departments.

The Supreme Court of Canada has stated that the *"purpose of the right to counsel is to allow the detainee not only to be informed of his rights and obligations under the law but, equally if not more important, to obtain advice as to how to exercise those rights."*[4] The latter point includes an obligation to inform an accused of the availability of legal aid services. In practical terms, this means that the very first contacts with legal aid services may require the close collaboration of police authorities.

On the issue of language, section 14 of the Charter states:

A fair trial requires that the accused be able to understand the language of the proceedings. Interpretive services must be available for all languages.

> *" A party or witness in any proceedings who does not understand or speak the language in which the proceedings are conducted or who is deaf has the right to the assistance of an interpreter."*

The Supreme Court of Canada has confirmed that section 14 reflects the requirements of natural justice and, therefore, all languages, regardless of their official status, must be accommodated to the extent required to ensure a fair trial. The Court has noted that the *"right to a fair trial is universal and*

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4 See *R. v. Brydges* [1990] 1 S.R.C. 190.

cannot be greater for members of official language communities than for persons speaking other languages."[5]

English and French have equality of status before any court established by Parliament.

Section 16(1) establishes that English and French are the official languages of Canada, while section 19(1) states that *"either English or French may be used by any person in, or in any pleading in or process issuing from, any court established by Parliament."*

2.1.2 The *Criminal Code*

Section 530 of the *Criminal Code* deals specifically with the issue of languages in the context of criminal proceedings. According to the Supreme Court of Canada, this provision

> *"creates an absolute right of the accused to equal access to designated courts in the official language that he or she considers to be his or her own. The courts called upon to deal with criminal matters are therefore required to be institutionally bilingual in order to provide for the equal use of the two official languages of Canada."* [6]

Section 530 of the *Criminal Code* creates an absolute right to a trial in either official language regardless of the person's ability to speak and understand the official language of the majority.

The Supreme Court of Canada emphasizes the requirement of maintaining a proper institutional infrastructure:

> *"In the context of institutional bilingualism, an application for service in the language of the official minority language group must not be treated as though there was one primary official language and a duty to accommodate with regard to the use of the other official language. The governing principle is that of the equality of both official languages."* [7]

The Court adds that the ability of a person to speak the language of the majority *"is irrelevant because the choice of language is not meant to support the legal right to a fair trial, but to assist the accused in gaining equal access to a public service that is responsive to his linguistic and cultural identity."*[8]

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5 See *R. v. Beaulac* [1999] 1 S.R.C. 768.

6 *R. v. Beaulac* [1999] 1 S.R.C. 768.

7 Ibid.

8 Ibid.

2.1.3 Impact of linguistic rights on legal aid

Legal aid plans are governed by provincial legislation; therefore, federal provisions can only create an incentive to offer services in both official languages.

Legal aid services fall under provincial jurisdiction and, as such, are not covered by federal provisions such as the *Official Languages Act*.[9] However, the complimentary functions of the federal and provincial governments are illustrated in the area of criminal law. While the provinces have the constitutional responsibility for the administration of justice - including the constitution, maintenance, and organization of criminal courts - the federal government has jurisdiction over Criminal Law and procedure in criminal matters.[10] It is under this latter area of federal jurisdiction that the federal government has adopted section 530 of the *Criminal Code*, establishing a right to have criminal proceedings in either one of the two official languages.

Thus, even when linguistic provisions are not directed specifically toward legal aid services, they nonetheless could have an impact on how services will be structured. If, for instance, a legal aid client elects to have his or her criminal trial in the official language of the minority, it creates an incentive for legal aid to provide counsel that speaks the language of the minority.[11] Along the same logic, the work of governments toward achieving institutional bilingualism in criminal courts, as required under section 530 of the *Criminal Code*, may motivate legal aid plans to consider, at a minimum, the provision of duty counsel services in both official languages.

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9 See *Official Languages Act*, R.S.C., 1985, c. 31; this Act establishes the conditions under which federal government services must be provided in both official languages.

10 See sections 91(27) and 92(14) of the *Constitution Act, 1867*.

11 This situation creates an incentive, but not an obligation. Section 530(1)(f) states that interpreters should be available to assist the accused, his or her counsel, or any witness during the proceedings.

2.2 Delivering services in the official language of the minority

In assessing policies and practices as they relate to official languages, one must consider a number of service delivery principles. These principles constitute what is generally recognized in Canada as good practice in the field of official languages service delivery.[12]

A number of policies and practices have been developed to ensure effective delivery of services in both official languages.

- **Active offer of service**

  The active offer of service may have a determining impact on clients from official language minority groups. According to a recent study, *"one cannot underestimate the importance of and need for an active offer in both official languages when service is provided. Needless to say, an office that greets its clients bilingually will increase demand for service in the language of the minority, whose members will feel at ease in continuing in their language."*[13]

  Typically, an active offer of service *"must include an audible greeting in the two official languages, both on the telephone and in person, to inform the public that service is available in English and French."*[14]

- **Availability and linguistic quality**

  Innovative service delivery approaches, new technologies, and increasing expectations that services are to be client-focused create particular linguistic challenges. The assessment of service availability in the two official languages must consider the various delivery methods used and determine the linguistic quality of these different services.

- **Institutional capacity**

  Language is a consideration that relates to the entire service delivery process (from initial contact with the client to the completion of service). To assess the overall institutional capacity of an organization to offer services in the two

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12 The Office of the Commissioner of Official Languages (OCOF) completed a number of studies on this issue. Two are particularly relevant here: OCOF, *The Equitable use of English and French Before Federal Courts and Administrative Tribunals Exercising Quasi-judicial Powers* (2001); and OCOF, *National Report on Service to the Public in English and French: Time for a Change in Culture* (2001).

13 OCOF, *National Report on Service to the Public in English and French: Time for a Change in Culture* (2001).

14 Ibid.

official languages requires an understanding of the recruitment of staff, and of the types of training and other professional development opportunities offered to employees.

2.3 Legal aid services

The relationship between lawyer and client is grounded on effective communication. A client makes decisions based on understanding of the law and legal proceedings.

In an adversarial justice system, communication between lawyer and client is paramount. Due to the complex nature of the law and of legal proceedings, a lawyer is required to act as an intermediary between the justice system and the client and to ensure that the client has an adequate understanding of all available options. Furthermore, a lawyer must act as an advocate of the client and represent his or her interests. As stated in the Canadian Bar Association's Code of Professional Conduct (1991): "*When acting as an advocate, the lawyer, while treating the tribunal with courtesy and respect, must represent the client resolutely and honourably within the limits of the law.*"[15]

Throughout all levels of service provided by legal aid (*Brydges*, duty counsel, court and trial representation), the lawyer must interpret the law and ensure that the client understands the consequences of any decision he or she makes. The ability of an accused person to instruct counsel rests on his or her comprehension of the issues at hand.

There can be several barriers to effective client-attorney communication. Among these are the literacy level and language skills of the client. The Canadian Bar Association has identified literacy as an important and common barrier to effective communication between lawyer and client. Even a person with a relatively high level of education may have difficulty understanding the law. A number of services initiated by the British Columbia Branch of the Canadian Bar Association hope to assist lawyers in improving communications and facilitating the development of a connection with clients.[16]

In establishing literacy as an important consideration in effective communication between lawyer and client, the Canadian Bar Association draws particular attention to clients whose first language is not English. These individuals experience increased difficulties in understanding written documentation.[17] The ability

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15 David M. Tanovich, "Charting the Constitutional Right of Effective Assistance of Counsel in Canada," *Criminal Law Quarterly*, 36 (1994), p. 415.

16 Mucalov, Janice Mucalov, "Overcoming Barriers to Client communication: Lawyers for literacy," *The Advocate*, 55(6) (1997), pp. 857-858.

17 Ibid., p. 859.

Inadequate language skills constitute one of many barriers to effective communication and to equal access to justice.

of a lawyer to communicate verbally with the client thus becomes a primary concern. Furthermore, the literature demonstrates that a person may have the necessary skills to communicate in a language at a conversational level, yet not be sufficiently fluent to comprehend the complex elements of the law.[18]

In an adversarial system of justice, legal aid ensures that defendants are not disadvantaged by having to face an experienced prosecutor without representation.

The importance of legal aid services in an adversarial system of justice rests upon the necessity to balance the expertise of the Crown prosecutor and that of the defendant.[19] Without adequate representation, a client's position within the justice system is compromised. As such, the attainment of *"equality before the law"* is the main impetus behind legal aid policy and includes the overall goal of working toward a *"just society."* In principle, regardless of one's social and economic standing in society, access to justice and equal representation is available.[20] Legal aid ensures protection before the law for those who cannot afford legal representation.

The remainder of this section will describe the services provided by legal aid plans across the country – *Brydges* representation, duty counsel services, trial representation, and other services (general information, advice, and assistance).

2.3.1 *Brydges* representation

***Brydges* representation refers to free legal advice immediately upon arrest or detention by police.**

As previously mentioned, the decision of the Supreme Court of Canada in *R. v. Brydges* established the right of an accused to access free and immediate counsel upon arrest and detention by the police. In the event that a detainee cannot afford his or her own attorney, legal aid must provide one. This means that legal representation must be available 24 hours a day, seven days a week.

In 1990, following this landmark case, all legal aid plans across the country instituted the necessary mechanisms to respond to the requirements of this decision. Although the methods of delivering this particular service may vary across Canadian jurisdictions, the basis remains the same: all detainees can contact a lawyer and obtain free legal advice "on the spot." In general, the advice is provided over the phone, and it is only in unusual circumstances or where the accused is facing serious charges that the lawyer may be required to attend to the accused in person.

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18 David J. Heller, "Language Bias in the Criminal Justice System," *Criminal Law Quarterly*, 37 (1995), p. 366.

19 National Council of Welfare, *Legal aid and the Poor* (Ottawa: Minister of Supply and Services Canada, 1995).

20 Dieter Hoehne, *Legal aid in Canada* (The Edwin Mellen Press, 1989) p. 100.

Decisions made by an accused upon arrest and detention can have significant impacts on the case. Effective communication between a lawyer and client is imperative.

The significance of *Brydges* representation lies in the immediacy of the service. As soon as an individual is arrested and detained by police, a number of crucial decisions, with very real impacts on the case, must be made – the decision to provide a statement to the police, the decision of whether or not to provide any information whatsoever, etc. The consequences of being misinformed with regard to these issues can very well jeopardize the person's defence, hence the importance of effective communication at this initial stage of the legal process. A lawyer is capable of advising the accused of his or her rights and thereby protecting the interests of the client. In accordance with the principle of "equality before the law," this decision allows for the *"effective balancing of the rights of citizens and the law enforcement interests of the state."*[21]

The immediate nature of *Brydges* representation renders the provision of this service in the official language of the minority particularly challenging. Whereas legal aid can respond to a general request for a lawyer who speaks the official language of the minority on an *ad hoc* basis (by certificate in the private bar in the case of a judicare delivery model, or where a staff lawyer with the required linguistic capacity is not available), this type of response is more challenging in the case of *Brydges* representation.

The immediacy of service required by *Brydges* representation imposes particular challenges on legal aid plans.

The obligation imposed by the Supreme Court of Canada on police officers was subsequently interpreted in various ways by the lower courts. The debate that ensued in Ontario involved the necessity for police officers to make specific reference to the toll-free number for accessing free and immediate legal advice.[22] One of the arguments advanced in favour of this requirement was that the justice system and its various components are intimidating to most individuals. If police officers are not required to inform the accused of this right, as well as to provide the means for obtaining the free and immediate advice, many detainees will not request a lawyer. Most wish to appear cooperative and non-confrontational, and, therefore, may often unknowingly waive their basic rights.[23] Considering the vulnerable position in which members of linguistic minorities in need of such services may find themselves, a similar argument may be made when debating whether it is mandatory for police to offer *Brydges* representation in both official languages.

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21 Wendy E. Oughtred, "Hotline to Duty Counsel: Who Benefits? Implications of *R. v. Baldwin*," *Journal of Motor Vehicle Law*, 5 (1994), p. 310.

22 Ibid., p. 311; see *R. v. Baldwin* (1993), 14 O.R. (3d).

23 Wendy E. Oughtred, "Hotline to Duty Counsel: Who Benefits? Implications of *R. v. Baldwin*," *Journal of Motor Vehicle Law*, 5 (1994), p. 314.

2.3.2 Duty counsel

Duty counsel services are available to those individuals who do not have representation at their first appearance.

Duty counsel is a service provided by legal aid in which a lawyer is available to represent an accused at his or her first appearance in court. In most jurisdictions, duty counsel services are available to any unrepresented accused regardless of financial circumstances. However, some jurisdictions' legal aid plans provide duty counsel services only to those individuals who are in custody, whereas others provide this service to any individual who is making a first appearance in court, regardless of whether he or she is in custody. According to the service delivery model adopted by a province, lawyers acting as duty counsel may be either Legal Aid staff lawyers or members of the private bar.

The legal aid literature and our consultations within the various jurisdictions indicate that duty counsel may very well represent the most important aspect of legal aid services provided. Indeed, the first appearance has lasting effects on a person's right to life, liberty, and security.

Duty counsel is considered one of the most important services provided by legal aid.

- At the first hearing, the accused person pleads guilty or not guilty to the charges against him or her. If the accused pleads guilty, he or she may request to be released until the time of sentencing. If the accused pleads not guilty, he or she may request to be released until the time of trial. If a judge deems an accused unsuitable for release, he or she may remain in prison for a period of anywhere from a few days to six months, or more. Pre-trial detention can have grave consequences on the outcome of the trial. According to a number of studies conducted in Canada, the United Kingdom, and the United States, individuals who are detained pending trial are more likely to be found guilty and more likely to be sentenced to imprisonment than individuals who obtain a judicial interim release.[24] A number of explanations for these findings have been advanced:

  - Detention before trial is generally an order of last resort; therefore, a detained accused will be negatively labelled. Judges and other criminal justice professionals may perceive the accused, for whom bail has been denied, in a negative light.

  - An accused person who is detained in jail has a more difficult time obtaining a lawyer, communicating with counsel, and searching for

[24] National Council of Welfare, *Justice and the Poor* (Ottawa: Minister of Public Works and Government Services Canada, 2000) pp. 28-30.

witnesses for a defence. Furthermore, taking the necessary steps to make a good impression on the court, such as obtaining employment, is not possible.

- The detained accused is under increased pressure to plead guilty because of the possibility of spending weeks or months in jail before trial, particularly if the person is charged with a minor first offence that would normally result in a relatively lenient sentence. Even if an accused is innocent, not wanting to lose income or employment as a result of being in jail is an incentive to plead guilty.[25]

- The choice of plea requires extensive legal expertise as it largely depends on the existence of a valid defence. The decision must be an informed one because entering the wrong plea can have damaging consequences. Pleading guilty when a valid defence is available leads to an unnecessary criminal record for the accused. A plea of not guilty in the absence of a valid defence can have equally devastating effects:

  - A judge, resenting the unnecessary trial, may deliver a more severe sentence.

  - It is more difficult for the accused to express remorse and regret when witnesses testifying at trial present him or her negatively. This can, in turn, lead to a more severe sentence.

  - The accused may be convicted of a more serious offence when they make an early guilty plea because plea bargaining on the charge is no longer an option..[26]

Lawyers providing duty counsel services must respond to an exceptionally high volume of cases. The capacity to communicate effectively is crucial.

Duty counsel have no control over the number of unrepresented individuals that may present themselves for a first appearance on any given day. Consequently, they must often deal with an exceptionally high volume of cases, and they are required to work with limited preparation time. Duty counsel will generally meet the accused person on the morning of his or her court appearance to get a brief synopsis of the facts. There is very limited time to offer assistance and advice, and the stakes can be high.

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25 Ibid., pp. 30-31.

26 Ibid., p. 38.

As with *Brydges* representation, the immediacy of the required service may pose significant barriers to the provision of this legal aid service in the official language of the minority. In addition to the immediate nature of duty counsel, the assistance that is required must be delivered within an extremely restricted time frame. As illustrated above, the magnitude of the consequences that the first appearance may have on the accused highlights the importance of being able to communicate effectively and efficiently with duty counsel.

2.3.3 Trial representation

A person who does not have the financial means to obtain his or her own attorney for trial may be eligible for legal aid representation. Depending on the delivery model adopted by the province, a legal aid client may be assigned a staff lawyer or may choose a lawyer in the private bar who is willing to accept a legal aid certificate.

A lawyer's capacity to speak and understand a client's language improves the effectiveness of representation.

The value of trial representation, as with other services provided by legal aid, is in the capacity of the lawyer to interpret the law for the accused, represent the interests of the accused, and present the accused with all available options. The complex nature of the law and of legal proceedings can make it difficult for an accused person to adequately present a case, as well as a valid defence, to the court without the assistance of legal counsel.[27] Aside from official language considerations, it is imperative that the lawyer and client are able to communicate. In order for a client to effectively instruct counsel, he or she must have an absolute understanding of the options and of the consequences of any decision made.

An accused person who must go before the court for trial is in a particularly vulnerable situation. The official nature of legal proceedings is very intimidating to an accused. Through the enactment of section 530 of the *Criminal Code*, Parliament has extended the official status of English and French to criminal proceedings. This enables the accused to proceed in the official language in which he or she is most comfortable. As previously noted in Section 2.1.3, although there is no obligation for legal aid to provide a lawyer who speaks the official language of the client, the right of an individual to proceed before designated courts in his or her own official language creates an *incentive* for legal aid systems to follow suit.

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27 David M. Tanovich, "Charting the Constitutional Right of Effective Assistance of Counsel in Canada," *Criminal Law Quarterly*, 36 (1994), p. 404.

Unlike *Brydges* representation and duty counsel services, trial representation in the official language of choice does not include the element of immediacy.

The challenge is to locate a lawyer capable of conducting a trial in the official language of the minority.

Unlike *Brydges* and duty counsel representation, trial representation can be more easily organized on an *ad hoc* basis. However, there are some key issues to consider when examining the issue of trial representation and official languages:

- Clients may be unaware of their right to trial in their official language of choice, much less of the availability of Legal Aid lawyers who speak the language of the minority.
- A lawyer's capacity to conduct a trial in the official language of the minority requires facility in technical and specialized terminology.
- The capacity of legal aid to provide lawyers capable of representing clients at trial in the official language of the minority depends largely on the availability of lawyers who speak the language, who practise criminal law, and who are willing to accept legal aid certificates or work as staff lawyers.
- Although a client may not wish to proceed with his or her trial in the official language of the minority, he or she may wish to obtain a lawyer who can communicate well in both languages.

3.0 Findings from the jurisdictions

This section presents the findings for each province on legal aid services in the official language of the minority, perceived gaps in these services, and proposed strategies to improve them.

3.1 Newfoundland and Labrador

French is the first language of over 2,000 people in Newfoundland and Labrador. They comprise about 0.5 percent of the total population. The primary areas where there might be a demand for French services are: Labrador City, St. John's, Grand Bank, Stephenville, and Corner Brook. In the last five years, the number of francophones has declined by approximately 400. About 22,000 people in the province speak both official languages.[28]

There is no *Association des juristes d'expression française* in Newfoundland and Labrador.

3.1.1 Services

Created in 1976, the Newfoundland Legal Aid Commission administers the provision of legal aid services in Newfoundland and Labrador. The *Legal Aid Act*, proclaimed in 1976, governs the power of the seven-member Board of Commissioners, which reports to the Provincial Minister of Justice. The Commission appoints all area directors as well as the Provincial Director.

The delivery system operates under a staff model,[29] and nine area offices across the province provide legal aid services. The offices are found in St. John's, Carbonear, Clarenville, Marystown, Gander, Grand Falls-Windsor, Corner Brook, Stephenville, and Happy Valley-Goose Bay.

Table 3 on the next page summarizes the key services currently offered by the Commission.

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[28] La Fédération des communautés francophones et acadienne [FCFA] du Canada . "Acadian and Francophone Community Profile of Newfoundland and Labrador," (Ottawa: FCFA du Canada, 2000).

[29] The Commission describes its delivery system as a mixed model, but it operates primarily as a staff model (see *Legal Aid in Canada: Resources and Caseload Statistics (1999-2000)*).

Table 3: Legal aid services in Newfoundland and Labrador	
Services	**Description**
Formal representation	*Criminal matters*: The Newfoundland Legal Aid Commission covers adults charged with indictable offences. Legal aid services are also available for summary conviction and provincial offences but only when there is a likelihood of imprisonment or loss of means of earning a livelihood. The Commission also provides assistance for youth accused of federal indictable offences and summary conviction offences. *Family matters*: Most family matters such as divorce, custody, access, child protection, and wardship are covered. Other coverage is determined on the basis of merit. *Civil matters*: The Commission covers refugee matters. Other civil matters are decided on the basis of cost and likelihood of success.
Duty counsel	Duty counsel services are provided in most criminal courts and in youth court. One staff lawyer is bilingual.
Brydges representation	A 24-hour toll-free line has been established to provide *Brydges* representation.
Information services	Advice and assistance can be obtained in person or on the phone through the regional offices.
Other	The Commission has a family conflict resolution office staffed by lawyers paid by legal aid. In addition, about a year ago, an 18-month Legal Family Aid pilot project was implemented (involving the Commission, Justice Canada, and the province) to address the legal needs of families.

3.1.2 Policies and practices relating to bilingual legal aid services

Newfoundland and Labrador does not have legislation or formal policies that deal specifically with the provision of French legal aid services. Overall, the Commission works from the premise that clients should be served in their preferred official language. To this end, it attempts to accommodate requests for French services.

- **Reception and intake services:** The Commission offers its services primarily in English. There is no active offer of French services, but if French services are required, the Commission will attempt to provide them.

- **Formal representation:** If a client asks to be represented in French, the Commission will offer the service through the bilingual staff lawyer or through a contractual arrangement with a bilingual private lawyer.

- **Duty counsel:** There is no policy on the provision of duty counsel services in French. The services are essentially

provided in English unless the bilingual staff lawyer is present or French is requested.

- ***Brydges* representation:** These services are usually provided in English. There have been occasions when the Commission has made arrangements with a private lawyer to assist with French.

3.1.3 Capacity to deliver bilingual legal aid services

The Commission's capacity to deliver services in French is limited. Approximately seven members of the bar in Newfoundland and Labrador speak French, and two of the private lawyers who had been providing French-language services to the Commission are no longer doing so.

The Commission does not actively offer French services but will attempt to accommodate any request for French services. One staff lawyer is able to communicate in French but would not be in a position to conduct a full trial in French.

Our consultations indicate that there are few requests for French legal aid services. It is estimated that approximately half a dozen requests for these services are made annually, and none of the key informants we consulted were aware of any situation in which they thought someone who should have been represented in French was not.

There are several francophone associations, but key informants were unaware of any official representation to the Commission by a community organization requesting a change in its approach to providing French services. However, efforts are being made to organize an *Association des juristes d'expression française* in Newfoundland.

All respondents agree that it is important to always have someone available to speak in the language of the minority, should the need arise. In addition, efforts should be made to systematically inform accused of their right to have a trial in French and of the fact that they can ask legal aid for representation in French.

In light of the low level of demand for French services, key informants indicated that the current approach is probably sufficient to meet the needs at this time.

3.2 Nova Scotia

According to 1996 Census data, French is the first language of approximately 36,000 people in Nova Scotia, comprising 4 percent of the total population. Acadians in Nova Scotia are predominantly located on Cape Breton Island and on the south coast of the province. They represent the majority in two of the eight municipalities of Digby and Yarmouth counties: Clare and Argyle. Acadians live primarily in rural settings, but a significant population (10,000 people) lives in the Halifax/Dartmouth region.

The number of Nova Scotians whose mother tongue is French has remained relatively stable in the past 50 years but has decreased somewhat since 1991. The proportion of the population whose first language is French has dropped from 6.1 percent to 4 percent since 1951. The number of people who know French is increasing; approximately 10 percent of the population can speak the minority official language.[30]

The *Association des juristes d'expression française* in Nova Scotia was established in 1994 and now includes more than 60 members. The Association works towards the promotion of increased accessibility of legal services in French. The objectives of the Association are:

- To work in collaboration with other legal professionals to promote, develop, and improve French-language services.
- To develop tools and resources required to practise law in French.
- To facilitate the implementation of and increase access to legal services in French.[31]

3.2.1 Services

Established as an experiment in 1972, legal aid became formally structured in 1977 with the enactment of the *Legal Aid Act* and the creation of the Nova Scotia Legal Aid Commission.[32] The Commission operates at arm's length from government, and the

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30 La Fédération des communautés francophones et acadienne [FCFA] du Canada. "Acadian and Francophone Community Profile of Nova Scotia". (Ottawa: FCFA du Canada, 2000).

31 For additional information on the *Association des juristes d'expression française de la Nouvelle-Écosse* visit the following Web site: http://www.pajlo.org/francais/quisomme/ajefne.html.

32 *Legal Aid Act*, R.S.N.S. 1989, c. 252.

Lieutenant Governor in Council nominates its directors.[33] Table 4 summarizes the main services currently offered by the Commission.

Table 4: Legal aid services in Nova Scotia

Services	Description
Formal representation	The Commission operates a staff model delivery system. Staff lawyers provide representation at trial for both criminal and civil matters (priority being given to criminal matters). Under some circumstances, such as when a conflict of interest exists or clients are given the choice of counsel, private lawyers acting on a certificate basis provide the services.
Duty counsel	The Commission does not operate a formal duty counsel service. However, the Commission provides services of a duty counsel nature to individuals in custody. A specialized duty counsel office is located in Halifax-Dartmouth, where higher caseloads are found.
Brydges representation	During business hours, the Commission offers legal advice, primarily over the phone, to individuals newly arrested. A contracted legal firm provides this service after business hours.
Clinic law and student legal aid services societies	The Commission provides some funding to the Dalhousie Legal Aid service in Halifax-Dartmouth to deliver clinical legal services.

3.2.2 Policies and practices relating to bilingual legal aid services

The province of Nova Scotia does not have legislation or formal policies that deal specifically with the provision of French legal aid services. However, our consultations indicate that the Commission is providing French service on an *ad hoc* basis.

- **Reception and intake services:** The 13 regional offices provide reception and intake services in English only. If a unilingual French-speaking person requires assistance, attempts will be made to put him or her in contact with a bilingual staff person.

- **Formal representation:** The Commission has staff with some capacity to communicate in French, but not to conduct a trial in French. If a legal aid client wishes to be represented by a bilingual lawyer, the Commission will issue a certificate to a lawyer who has the capacity to communicate in French.

- **Duty counsel:** The Commission does not automatically offer services in French to individuals in custody. However,

[33] Canadian Centre for Justice Statistics, *Legal Aid in Canada: Description of Operations* (Ottawa: Canadian Centre for Justice Statistics, 1999, Catalogue no. 85-217XIB).

if the need arose, the Commission would attempt to contract a private firm with bilingual capacity to provide this service.

- ***Brydges* representation**. As with other services, the Commission does not systematically offer *Brydges* representation in French. However, the contract between the Commission and the private firm that offers *Brydges* representation outside of business hours stipulates that services in French should be provided if requested.

3.2.3 Capacity to deliver bilingual legal aid services

Our consultations indicate that the Commission has limited capacity to provide French services. In certain communities, staff members are able to communicate in French, but no lawyers have identified themselves as being capable of conducting a trial in French. The Commission does not actively offer services in French, nor does it guarantee that these services will be immediately accessible. It will, however, attempt to provide services in French upon request. In light of this, key informants pointed to a number of considerations that we must take into account in assessing the extent to which this level of services actually meets the perceived need of the official language group.

- Most key informants noted that the current demand for French services is low. It appears that many Acadians prefer proceeding in English, the language in which they better understand the legal terminology.

- While some Acadians prefer that court proceedings be conducted in English, they may feel more at ease communicating with their lawyers in French. In this context, the need relates primarily to the capacity of a lawyer to hold discussions in French, but does not include the capacity to write and conduct a formal trial in French.

- Key informants noted that even when a lawyer and a client both speak French, it does not necessarily mean that they can effectively communicate with one another. The French language has historically evolved differently in Acadian communities than in other francophone communities.

- Provision of French-language services would be conditional on the Commission's capacity to recruit bilingual lawyers. Key informants emphasized that there are few lawyers who specialize in criminal law, fewer who

are bilingual, and even fewer who are bilingual and who do legal aid work. Lawyers who speak both official languages may also be presented with more appealing opportunities in other provincial and federal departments.

3.2.4 Strategies to improve bilingual legal aid services

Key informants identified a number of avenues to improve French legal aid services, either by having what is currently available better known or by implementing new measures. Table 5 summarizes the findings that emerged from our consultations.

Table 5: Suggestions for improving bilingual legal aid services

Systematic provision of services	Key informants suggested that a more systematic offer of French services would probably increase the demand for these services. Special arrangements with other provinces, such as New Brunswick or Québec, could assist in providing an increased level of services. *Brydges* representation is provided over the phone and could, therefore, involve lawyers who are not located in Nova Scotia.
Training	The Commission could offer French courses to Legal Aid staff lawyers. Universities offering French law programs, such as the Université de Moncton, could provide these courses.
Pilot projects	The Commission could test alternative delivery structures through pilot projects. Having services more available in some communities would allow the Commission to get a better sense of the actual needs for French services.

Key informants estimated that an investment of approximately $150,000 would allow the Commission to offer French legal training. This investment would cover registration fees, living expenses, travel, and replacement costs. It was emphasized that the federal government's assistance is critical for improving the language capacity for legal aid. It would not otherwise be treated as a priority over the competing demands of the Commission's already strained budget.

3.3 Prince Edward Island

The 1996 Census reported French was the first language of 5,722 people in Prince Edward Island (4.3 percent of the total population). The majority of Acadian and francophone communities are located in the western part of the Island, in Prince

County, where they represent approximately 10 percent of the population. They are primarily concentrated in rural regions, but approximately 1,000 francophones and Acadians are located in Summerside and the surrounding communities. The Acadian and francophone population represent a majority in some villages of the Évangéline region.

From 1951, the proportion of francophones dropped significantly, from 8.6 percent of the population to 4.8 percent in 1981. The number of francophones, however, has remained relatively stable since 1981, dropping only by about 100. In addition, the number of people who know and speak French appears to be increasing; 11 percent of the population (15,000 people) say that they can speak French.[34]

Despite there being several Acadian and francophone community organizations throughout the province, an *Association des juristes d'expression française* has not been established.

3.3.1 Services

The province of Prince Edward Island has no legal aid legislation. Instead, legal aid is a program administered by the Department of Community Services and the Attorney General. The criminal legal aid program was implemented in 1973, the family legal aid program in 1980. Full-time staff, comprised of four lawyers and three secretaries, provide legal aid services.

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[34] La Fédération des communautés francophones et acadienne [FCFA] du Canada. "Acadian and Francophone Community Profile of Prince Edward Island." (Ottawa: FCFA du Canada, 2000).

Table 6 summarizes the legal aid services currently offered.

Table 6: Legal aid services in Prince Edward Island	
Services	**Description**
Formal representation	The coverage provided in criminal matters applies to adults charged with indictable offences. Legal aid services are also available for summary conviction and provincial offences, but only when there is a likelihood of imprisonment or loss of means of earning a livelihood. The program provides assistance for youth accused of federal indictable offences and summary conviction offences. Most of the civil cases handled are family matters, involving only the most urgent areas of family law where there is a risk of violence or abuse.
Duty counsel	Prince Edward Island does not have a duty counsel service *per se*. Staff lawyers are usually available to provide advice during business hours in family and criminal matters. In Prince Edward Island, this type of duty counsel service is limited to individuals who meet the eligibility criteria.
Brydges representation	The legal aid program does not offer formal *Brydges* representation. Police authorities are expected to take measures to refer individuals who are arrested to a staff or private lawyer. Lawyers who accept *Brydges* calls are not automatically paid by legal aid.

3.3.2 Policies and practices relating to bilingual legal aid services

French Language Services Act

In 1999, the Legislature of Prince Edward Island passed the *French Language Services Act*, the purpose of which is to *"specify the extent of French language services to be provided by government institutions"* and to *"contribute to the development and enhancement of the Acadian and francophone community."*[35]

Section 7 of the Act states:

> *"Where the Acadian and francophone community could reasonably be expected to use a particular service on a regular basis, every government institution shall ensure the following:*
>
> *(a) all written correspondence in English or French sent to any government institution is replied to in the language of the original correspondence;*
> *(e) all requests to communicate in English or French with a government institution are complied with;*
> *(f) French services are provided during at least one session of every series of consultations;*
> *(h) the participation of the Acadian and francophone community on various boards, commissions and agencies within the Government of Prince Edward Island."*

[35] *French Language Services Act*, R.S.P.E.I. 1988, c. F-15.1

The sections of the Act pertaining to the administration of justice have yet to be proclaimed.

Prince Edward Island provides legal aid services in the language of the minority on an *ad hoc* basis. The general policy regarding French-language services is to provide them through contract with members of the private bar when they are required.

- **Reception and intake services:** Services are offered in English only.
- **Formal representation:** Legal aid in Prince Edward Island does not have any French-speaking lawyers on staff. If someone requests services in French, a bilingual lawyer will be hired on contract. Legal aid will bring in lawyers from New Brunswick if required.
- **Duty counsel:** No duty counsel services are available in French.
- ***Brydges* representation:** The police departments have lists of private bar lawyers who will accept *Brydges* calls. Perhaps only three lawyers speak French.

3.3.3 Capacity to deliver bilingual legal aid services

The legal aid system in Prince Edward Island does not have any capacity to provide services in the official language of the minority. Although Legal Aid will issue certificates to lawyers in the private bar, key informants raised some important concerns with this process:

- Very few French-speaking lawyers in the province practise criminal law and accept legal aid cases. Those French-speaking lawyers who practise criminal law often have limited experience with legal aid cases.
- The tariff for legal aid certificates is too low; many lawyers will not accept legal aid cases for this reason. In addition, Legal Aid receives limited funding for certificates they can issue to the private bar.

Key informants indicate that the demand for French legal aid services is low. Most francophones in the province speak English and do not request services in French. For this reason, some key informants do not perceive any gaps in the legal aid system in terms of official languages. Other key informants, however, have

identified several gaps in the provision of legal aid services in the official language of the minority:

- A French-speaking person who goes to the Legal Aid office for assistance and/or advice will not receive services in French. Legal aid will not be able to help a unilingual French-speaking client.

- Intake documents and information are available in English only.

- Lawyers providing *Brydges* representation are not necessarily paid by legal aid. If a client cannot pay for the service, the lawyer must make an application to legal aid in order to receive compensation. Lawyers will seldom do this because the amount of time spent on the application is not worth the amount of money that they may or may not receive from legal aid. This situation does not encourage lawyers to accept *Brydges* calls.

According to key informants, it is very important for services to be available in both official languages in order to reduce misunderstandings between counsel and client. Effective communication or the lack thereof can have important consequences on the advice given to a client and the client's understanding of that advice. It is important to francophone clients that they receive legal aid services in French, but since most are comfortable in English, they will not request services in French because the delays are too great. Key informants noted that the priority area should be those services containing an element of urgency and immediacy, such as duty counsel services and *Brydges* representation.

The main barriers to the provision or expansion of French legal aid services, as identified by key informants, are:

- Prince Edward Island's legal aid program is under-funded; therefore, French-language services are not a priority. Other needs are more pressing.

- Many criminal justice professionals perceive the organization of a French trial as a hassle. There are delays in finding a French-speaking lawyer and a French-speaking judge.

- There is a lack of impetus to make French legal aid services available. Many individuals believe that if a person speaks English, he or she does not need French legal aid services.

- As previously mentioned, Prince Edward Island has few French-speaking lawyers, which makes it difficult for legal aid to recruit bilingual personnel.
- There are no resources for providing French-language training to lawyers and other Legal Aid staff.

3.3.4 Strategies to improve bilingual legal aid services

Key informants noted that, in order to improve the delivery of French legal aid services, there must be awareness within Legal Aid and the justice system in general of the need to provide services in French. The population also must be aware of the importance of providing services in the official language of the minority. Other suggested changes include the hiring of at least one bilingual staff lawyer and increased funding for legal aid certificates.

French training was also mentioned as a potential strategy; however, key informants indicated that it is not an adequate measure. It is difficult for someone without any basic French capacity to learn and maintain the language.

3.4 New Brunswick

The 1996 Census reported that French is the first language of approximately 33 percent of the population (242,408 people) of New Brunswick. The majority of the Acadian population is located in Madawaska, the Acadian Peninsula in the northeast, and the southeast of the province. Close to 94 percent of all francophones in New Brunswick live in the following seven counties: Gloucester, Kent, Madawaska, Northumberland, Restigouche, Victoria, and Westmorland. The francophone and Acadian populations are predominantly located in rural settings but Edmunston, Bathurst and Moncton/Dieppe have become highly francophone.

The number of people with French as a mother tongue has increased steadily since 1951, although the proportion of the population whose first language is French has declined slightly since 1951 (from 36 percent to 33 percent). More people can speak

French, however; according to 1996 data, more than 310,000 people (42.7 percent of the population) know French.[36]

The *Association des juristes d'expression française* in New Brunswick was established in 1987 and is now comprised of approximately 250 members. The objectives of the Association are to promote public French legal services and make them more accessible, allow easier access to French legal material and resources, inform the population of their linguistic rights, and represent francophone and Acadian populations before legislative authorities.[37]

3.4.1 Services

The passage of the *Legal Aid Act* in 1971 afforded the Law Society of New Brunswick the authority to establish and administer the legal aid plan for the province.[38] In 1972, Legal Aid New Brunswick began providing legal aid services through a judicare model. A criminal staff lawyer currently provides services in Edmunston and, since May 1993, the provincial Department of Justice has operated a Domestic Legal Aid Program that employs family solicitors under contract.[39]

The Legal Aid Committee, appointed by the Law Society, provides advice on policy and matters of law. Members are directly responsible to the Council of the Law Society. A provincial director, appointed by the Law Society and approved by the Minister of Justice, oversees and coordinates the plan province-wide.

The provincial Legal Aid office is located in Fredericton. Additionally, there are eight regional offices across the province, each staffed with an administrative officer who is responsible for intake, the preparation of lists of lawyers to serve on legal aid panels, and the appointment of duty counsel to criminal courts. The province's regions are: Bathurst, Campbellton, Edmundston, Woodstock, Moncton, Miramichi, Saint John, and Fredericton. In addition to administrative officers, each regional office includes

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36 La Fédération des communautés francophones et acadienne [FCFA] du Canada, "Acadian Community Profile of New Brunswick", (Ottawa: FCFA du Canada, 2000).

37 For additional information on the *Association des juristes d'expression française du Nouveau-Brunswick*, visit the following Web site: http://www.ajefnb.nb.ca/.

38 See the *Legal Aid Act*, 1970, R.N.B., C.11

39 Before April 2001, the Domestic Legal Aid Program was managed entirely by Court Services; as of this date, the lawyer services component is under the management of Legal Aid New Brunswick. Therefore, they employ, through contract, family solicitors.

family solicitors who work under the Domestic Legal Aid Program.

The following table summarizes the services currently offered by Legal Aid New Brunswick.

Table 7: Legal aid services in New Brunswick

Services	Description
Formal representation	*Criminal matters*: Legal Aid New Brunswick provides coverage to adult and youth charged with federal offences where there is a probability of imprisonment upon conviction, where there are circumstances mitigating the severity of the sentence that may be imposed, or where extraordinary circumstances determine that it is in the best interests of justice to represent the accused. Adult and youth may also be represented when charged with provincial offences if there is a possible defence to the charge and where there is likelihood of jail time if convicted. Legal aid coverage extends to appeals by both the Crown and the defence where specified criteria are met. *Civil matters*: No coverage is available for civil law matters. *Family matters*: Legal aid is provided for cases involving permanent guardianship and variation applications for those found unable to pay. The Domestic Legal Aid Program covers services to victims of spousal abuse, as well as mediation services and legal services for beneficiaries of support. The Domestic Legal Aid Program has been in place since May 1993, and is operated in partnership by the Department of Justice and Legal Aid New Brunswick.
Duty counsel	Duty counsel services are available to any accused for any charge for a first appearance. Duty counsel are also available at enforcement hearings and for interim custody applications in child protection cases.
Brydges representation	Members of the private bar provide after-hours legal advice and assistance to detainees. The service is generally provided over the phone. Police retain lists of lawyers who accept *Brydges* calls.
Information services	Advice and assistance is provided through the regional Legal Aid offices. These offices include intake staff and family solicitors only. A person can drop in or phone for information.
Other	Legal Aid New Brunswick does not maintain a Web site or an information line.

3.4.2 Policies and practices relating to bilingual legal aid services

The *Canadian Charter of Rights and Freedoms*

Section 16(2) of the *Canadian Charter of Rights and Freedoms* states:

> *"English and French are the official languages of New Brunswick and have equality of status and equal rights and privileges as to their use in all institutions of the legislature and government of New Brunswick."*

In so doing, the Charter declares New Brunswick an officially bilingual province – the only one in Canada. French and English share equal status, not only before the courts but also throughout all levels of government services.

Additionally, section 20(2) states:

> *"Any member of the public in New Brunswick has the right to communicate with, and to receive available services from, any office of an institution of the legislature or government of New Brunswick in English or French."*

This creates a constitutional obligation for the province to provide any government services in both languages. The Law Society, through a mandate from the province, provides legal aid services and thereby constitutes an *"institution of the legislature or government."* All responsibilities regarding the provision of services in both English and French are therefore transferred on to the Law Society.

The *Official Languages of New Brunswick Act*

This Act reiterates that the official languages of the province are English and French and that any government services must be available in both languages. Section 10 of the *Official Languages of New Brunswick Act* states:

> *"Subject to section 15, where requested to do so by any person, every public officer or employee of the Province, any agency thereof or any Crown corporation shall provide or make provision for such person*
>
> *(a) to obtain the available services for which such public officer or employee is responsible, and*
>
> *(b) to communicate regarding those services,*
>
> *in either official language requested."*

In the same way that the Charter requires the provision of services in both official languages, so does this Act. Section 20(2) of the *Charter*, however, does not limit the provision of such services to those individuals who make a *request*. In other words, while section 10 of the *Official Languages of New Brunswick Act* does not impose a requirement for actively offering services in both official languages, the Charter section does imply an obligation of "active offer."[40]

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[40] Michel Doucet, "La *Loi sur les langues officielles du Nouveau-Brunswick* respecte-t-elle les obligations linguistiques constitutionnelles de la province que nous retrouvons aux articles 16 à 20 de la *Charte*

In New Brunswick, access to legal aid services in both official languages is a right and, therefore, a priority for Legal Aid New Brunswick. In keeping with the province's constitutional obligations, Legal Aid New Brunswick, through various practices, ensures that all services are provided in either official language as requested.

- **Reception and intake services:** All offices located in communities with a concentration of French-speaking individuals have bilingual administrative officers. In those regional offices where the officer is not fluent in both official languages, arrangements are made to provide the service in French as required. The application form is bilingual; this can facilitate the intake process.

- **Formal representation:** A number of lawyers throughout the province are capable of speaking both official languages. If a French-speaking lawyer is not available in a particular area, counsel from another region will be assigned.

- **Duty counsel:** In certain regions, duty counsel lawyers are bilingual or else easily accessible in the language of the minority. Some regions have French court days once a month with bilingual duty counsel available on those days. Where the majority of lawyers are English-speaking only, interpretive services are provided upon request.

- ***Brydges* representation:** Many areas of the province have sufficient bilingual lawyers to provide this service in both official languages at all times. If necessary, a detainee can contact a bilingual lawyer in another region.

- **Information services:** Depending on the office, a client may be able to obtain information in both official languages. If the administrative officer cannot speak French, the client is referred to an office with a bilingual officer, or, if the family solicitor is bilingual, he or she may provide the necessary information.

3.4.3 Capacity to deliver bilingual legal aid services

New Brunswick's French-speaking population is dispersed across the province, yet concentrated in particular regions. The northern part of the province is mainly francophone, whereas the southern

canadienne des droits et libertés?" Avis préparé à la demande de l'Association des juristes d'expression française du Nouveau-Brunswick, 2001, p. 3.

part of the province is primarily anglophone. Legal Aid's capacity to deliver its services in French varies accordingly. Our consultations indicate that legal aid services are readily available in both languages in those areas with a significant francophone population. However, services in French may be more difficult to access in regions with a predominantly English-speaking population.

- **Fredericton**

  Our consultations indicate that the population of Fredericton is approximately 95 percent English-speaking and that the need for French legal aid services is relatively low. Legal Aid does have the capacity to provide services in French for trial representation, duty counsel, and *Brydges* representation. There is French court one day a month, and a bilingual duty counsel is available on that day. On other days, however, duty counsel are usually English-speaking only.

  Legal Aid lawyers in Fredericton are English-speaking only. According to Legal Aid New Brunswick, French language services are arranged where necessary.

- **Moncton**

  According to our consultations, approximately 20-25 percent of legal aid clients request services in French. Usually two duty counsel are available – one anglophone and one bilingual. In Youth Court, however, duty counsel is usually English-speaking only. Few French-speaking lawyers accepting legal aid certificates are comfortable representing a client at trial. There are no difficulties where *Brydges* representation is concerned.

  Legal Aid lawyers in Moncton are bilingual.

- **Bathurst/Campbellton/Edmundston**

  These areas are predominantly francophone. The majority of the population, as well as of legal aid clients, are French-speaking and request services in French. Most or all lawyers and administrative officers are bilingual.

  Legal Aid lawyers in these cities are bilingual.

- **Miramichi/Woodstock/Saint John**

  Key informants have indicated that the provision of legal aid services in French can be particularly challenging within these regions of the province. However, because of

the extremely low demand for services in French, the situation is not considered problematic. All or most local lawyers and administrative officers are English-speaking only, so there is little or no capacity to provide services in French. When French language services are required counsel are arranged from outside the area by Legal Aid New Brunswick.

The steps taken by a client requiring legal aid services in French are the same as those taken by a client requiring services in English: he or she must go to the Legal Aid regional office to fill out an application. According to our consultations, services are not necessarily actively offered in both official languages. The burden thus lies with the client to ensure that he or she makes his or her desire to obtain services in French known to the service provider.

Key informants identified a number of gaps and key considerations relating to the provisions of legal aid services in the official language of the minority:

- Very few lawyers accept *Brydges* calls, so the lists are quickly exhausted. Gaining access to this service in the official language of the minority can be particularly difficult, especially considering that *Brydges* lists do not identify lawyers by linguistic capacity. Significant delays in retaining counsel can occur as a result.

- Duty counsel services are not always readily available in the official language of the minority, and this is particularly problematic. Several key informants noted the importance of the first appearance and indicated that the consequences of not having access to this service in one's own language can be detrimental to the case. A number of key informants identify duty counsel services as a priority target area. According to Legal Aid New Brunswick, where a need for bilingual services are anticipated counsel are made available.

- There appears to be a lack of training available for lawyers to upgrade their French-language skills. Additionally, resources and tools for francophone lawyers are lacking. However, there is extensive language training that is generally available through private services. Legal Aid New Brunswick also reports that all materials are available in both official languages.

- Clients are generally uninformed of their right to legal aid services in their official language of choice. The availability of such services is not clearly identified, and

service providers do not always inform clients of this right, so there is a lack of active offering. Additionally, key informants noted that legal aid clients are facing situations of significant stress and find themselves confronted with a very intimidating legal system. The opportunity to communicate in the preferred official language increases a client's comfort level.

- Some key informants believe that the system does not encourage the use of French and believe that a prejudice exists against individuals who request services in the official language of the minority. Many professionals in the criminal justice system maintain the view that if a client speaks English, he or she does not require French services. However, as noted in Section 2.3, a person may indeed be capable of expressing him- or herself in a language but not have an adequate knowledge of the language for legal and judicial proceedings.

  Key informants repeatedly highlighted the importance of providing services in either official language because it is a constitutional right; the provision of these services should not depend on need. According to Legal Aid New Brunswick, support staff are bilingual in bilingual areas and resource materials are available in both official languages.

According to our consultations, the provision of legal aid services in the official language of choice is important; otherwise, a client may not understand the proceedings and available options. Clients can better defend themselves, better express themselves, and are in a more favourable position to instruct their lawyer effectively when they are able to communicate in the official language of their choice.

3.4.4 Barriers to providing bilingual legal aid services

Although Legal Aid New Brunswick has an overall capacity to provide its services in both official languages, our consultations highlight a number of important barriers to the provision of legal aid services in French. These include:

- *Financial barriers*: Due to exceptionally low legal aid rates, lawyers do not want to accept legal aid certificates. By reducing the overall pool of lawyers willing to do legal aid work, financial barriers also reduce the number of French-speaking lawyers available.

- *Lack of resources:* Lawyers' support staff are generally English-speaking only, adding to the difficulties of practising criminal law in French. Key informants noted a lack of resources overall (case law, French materials, etc).

- *Systemic barriers*: There is an atmosphere of accommodation throughout the justice system. Francophones who speak English are expected to proceed in English. A number of key informants indicated that the client must often accommodate the system's needs rather than have the system accommodate his or her needs.

  Furthermore, many anglophone lawyers who speak French as a second language do not feel confident enough to represent a client in French because many fear the courts judgement of their poor French will have a negative impact on the defence of their client..

  Another observation made by a number of key informants is that there is little or no active offering of French legal services by the police. The police often represent the point of entry for clients into the justice system; police officers are the key link between clients and the legal aid system.

- *Client demand*: Many legal aid clients will not insist on their right to French-language legal aid services. Our consultations indicate that many individuals hesitate to request services in French because they do not want to be perceived as causing problems for the system. This represents an important barrier to receiving services in the language of the minority.

3.4.5 Strategies to improve bilingual legal aid services

There is a general feeling among various key informants that Legal Aid New Brunswick is making an effort to ensure the provision of services in both official languages. In those regions with primarily English-speaking individuals, very few changes are recommended because Legal Aid adequately responds to the low demand for French services. Other key informants, who believe that Legal Aid needs to improve its services in French, offered ideas for change. The following table summarizes their ideas.

Table 8: Suggestions for improving bilingual legal aid services	
Training	Key informants suggested training programs/courses for lawyers who wish to upgrade their French-language skills generally, and specifically as they pertain to the practice of law (legal terminology).
Judicare vs staff model	Key informants noted that identifying bilingual lawyers who practise criminal law and who are willing to accept legal aid certificates is challenging. Criminal law is a field that requires extensive expertise. In this respect, the adoption of a staff model was advanced as a possible solution to ensuring access to a French-speaking lawyer.
Active offer	The issue of "active offer" was repeatedly mentioned as critical in providing services in French. Key informants noted the importance of requiring administrative officers, duty counsel, and police to actively offer services in both official languages; they are the main point of entry for clients of Legal Aid. Not only must the services be offered in both official languages, they also must be offered in a positive manner. Many key informants indicated that the justice system, overall, holds negative views of demands for services in French. A client must not be made to feel that he or she is bothersome when requesting services in the language of the minority.
Increased legal aid rates	Key informants indicated that in order to encourage lawyers to accept legal aid certificates, Legal Aid must increase the rates paid to lawyers. It was suggested that bonuses could be offered as an incentive to bilingual lawyers who take on legal aid cases.

It appears from our consultations that legal aid services in New Brunswick are generally provided in both official languages. As stated previously, the capacity varies widely across the different regions. The necessary improvements, as noted by key informants, mainly relate to changes in approach, offer, and delivery model. Additional funding would assist the province in providing French-language training for lawyers and would allow Legal Aid New Brunswick to increase certificate rates overall.

3.5 Québec

The 1996 Census reported English is the first language of approximately 660,000 individuals in Québec,[41] which represents 9.4 percent of the Québec population. According to the Census, 72.5 percent of all anglophones in Québec reside in Montréal, where they represent 14.5 percent of the total population. More than three million individuals residing in Québec, however, report that they speak English; English is a second language for most.

[41] Approximately 89 percent of these individuals have English as their only mother tongue. The remaining 11 percent have English as one of their mother tongues.

3.5.1 Services

The first legal aid services emerged in Québec in the early 1950s as an initiative of the Bar Section of Québec City. During the following years, the Québec government and the Bar of the Province of Québec signed agreements relating to the provision of legal aid services. In 1972, the Québec Legislature passed the *Legal Aid Act*,[42] which in turn, established the Legal Services Commission.[43]

The Commission operates at arm's length from government. It has the authority to establish legal aid centres and may make regulations addressing a range of issues such as the information required from applicants, the forms to be used for applications, and other matters related to the implementation of the Act. Currently, 11 regional and two local centres oversee the delivery of services in 128 Legal Aid offices (25 of which are open part-time). Each regional and local centre is governed by its own Board of Directors, whose members are nominated by the Commission.

Table 9 summarizes the key services currently offered by the Commission.

Table 9: Legal aid services in Québec

Services	Description
Representation at trial	The Commission operates a mixed judicare-staff model. Clients have a right to be represented by the private lawyer of their choice. Otherwise, they are represented by staff lawyers. The current caseload is equally divided between staff and private lawyers.[44] Legal aid is provided for a range of civil and criminal cases, including criminal charges involving an indictable offence, family cases, youth protection, young offenders, and income security matters.
Duty counsel	Staff lawyers provide duty counsel representation at all criminal, administrative, and family court locations across the province. Only summary legal assistance is provided through duty counsel representation.
Brydges representation	The Commission has centralized this service and established a toll-free number that may be used 24 hours a day, seven days a week. Legal aid staff lawyers provide the service.

42 The *Legal Aid Act*, R.S.Q., c. A-14.

43 For a detailed profile of the Commission, see Canadian Centre for Justice Statistics, *Legal Aid in Canada: Description of Operations* (Ottawa: Statistics Canada, 1999, Catalogue no. 85-217).

44 In the fiscal year 2000/01, the Commission accepted 211,485 legal aid applications. Staff lawyers provided the service in 50.4 percent of these cases, while private lawyers provided the service for the remaining 49.6 percent.

3.5.2 Policies and practices relating to bilingual legal aid services

While not directly applicable to legal aid services, some of the provisions of the *Constitution Act, 1867* and the *Charter of the French Language* constitute relevant contextual information.

The *Constitution Act, 1867*

Section 133 of the *Constitution Act, 1867* states: "*[e]ither the English or the French Language (...) may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Québec.*"

Historically, both English and French have been used in the Québec courts. While not creating a direct right to legal aid services in both languages, this provision has created a tradition of offering these services in both languages.

The *Charter of the French Language*

Section 7 of the *Charter of the French Language* states: "*French is the language of the legislature and the courts in Québec, subject to the following: (...) either French or English may be used by any person in, or in any pleading and process issuing from, any courts in Québec.*"[45]

Section 9 adds: "*[e]very judgment rendered by a court of justice and every decision rendered by a body discharging quasi-judicial functions shall, at the request of one of the parties, be translated into French or English, as the case may be, by the civil administration bound to bear the cost of operating such court or body.*"

The Commission's policy is to offer all of its services in both French and English. Upon a request made by a client to receive services in English, Legal Aid offices will attempt to provide the service immediately. The Commission noted during our consultation that, in larger centres and in smaller communities with a significant English-speaking population, the Commission is generally in a position to offer its services in English without significant delays. In other communities, it is possible that some delays will occur as a result of having an employee travel from another location. The Commission never uses interpreters to provide its services in English.

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[45] *Charter of the French Language*, R.S.Q., c. C-11.

- **Reception and intake services**. The Commission's policy is to provide its reception and intake services in both French and English. There is no active offering of English services, except through automated phone services, where clients may press a number to receive information in English. Otherwise, clients must indicate their desire to be served in English. The Commission attempts to have at least one bilingual staff person in each local office. In larger centres and in communities with a significant English-speaking community, employees are expected to be able to communicate in English.

- **Formal representation**. The Commission offers its services in both French and English to clients who elect to be represented by a staff lawyer. In the larger centres and in communities with a significant English-speaking population, staff lawyers are expected to be able to communicate in English. Other Legal Aid offices attempt to have at least one staff lawyer who is bilingual. Clients who elect to be represented by a private lawyer are responsible for finding a lawyer who can speak English.

- **Duty counsel**. The same principles as those described above for "Formal representation" apply to duty counsel services.

- ***Brydges* representation**. With a centralized service available through a toll-free number, the Commission is in a position to offer *Brydges* representation in both French and English. Bilingualism is a prerequisite for any lawyer contracted to provide this service.

3.5.3 Capacity to deliver bilingual legal aid services

Our consultations indicate that the Commission's capacity to provide services in English is significant, particularly in Montréal and other communities with large anglophone populations, such as Gatineau, Sherbrooke, Québec City, and the Gaspésie.

- *Brydges* representation is provided through a centralized toll-free service, managed by the Commission. According to key informants, this service delivery structure facilitates the delivery of English services since all lawyers who are assigned to provide *Brydges* representation must be able to communicate in English.

- Legal aid staff lawyers provide both duty counsel and full representation. Our consultations indicate that, generally, these services are provided by individuals who are able to communicate in English.

Many key informants noted that, for the vast majority of Legal Aid staff lawyers, English is a second language. Few anglophones work as Legal Aid staff lawyers. In this context, the proficiency of staff lawyers to proceed in English varies. While some staff lawyers are bilingual and may proceed entirely in English, including the closing arguments, others will have a more limited capacity and may communicate in English with a client but address the court in French. This observation also applies to private lawyers who do legal aid work.

A number of key informants noted that legal proceedings, particularly criminal ones, are rarely conducted entirely in one language. While the client and his or her lawyer may proceed in English, it is possible that some of the witnesses or the judge may require the services of an interpreter. However, interpreters are never used by the Commission to provide services in English to a client.

Key informants from both legal aid and other groups emphasized that it is practically impossible to provide all services in English, at all Legal Aid offices, without any delay.

As emphasized by some of the key informants, the provision of legal aid services in English is particularly critical for some of the more vulnerable groups, such as seniors or individuals who have recently moved to Québec and have little or no capacity to understand or speak French.

3.5.4 Strategies to improve bilingual legal aid services

Many key informants (from all groups consulted) noted that there is little need to improve access to legal aid services in English. However, since the vast majority of staff Legal Aid lawyers have English as a second language, it may be helpful to offer language training to upgrade or maintain their capacity to communicate in English.

Key informants mentioned that each Legal Aid office has a specific territory assigned to it. Legal aid clients have no choice but to consult the office assigned to the community in which they reside. In larger centres where anglophones constitute a small portion of the population, not all administrative employees and

staff lawyers can be expected to be fully bilingual. In these cases, the Commission could designate one office that would offer all of its services in both languages at all times. All community organizations and clients in the surrounding areas could then turn to this office instead of having to enquire about English capacity each time they contact a Legal Aid office.

3.6 Ontario

French is the first language of approximately 500,000 people in Ontario (4.7 percent of the total population). Francophones are located in all parts of Ontario, but most live in Eastern Ontario (Ottawa, Prescott-Russell, and Stormont, Dundas and Glengarry). Significant concentrations of francophones also live in Northern Ontario (150,000 people) and in the Greater Toronto Area (110,000).

From 1951 to 1971, the number of Ontarians with French as a mother tongue increased, but has remained relatively stable since. Although the number of people who can speak French continues to grow – in 1996, more than 1,280,000 people could speak French, representing 12 percent of the total population – there has been a drop in the percentage of people whose mother tongue is French; since 1951 the proportion has decreased from 7.4 percent to 4.7 percent.[46]

The *Association des juristes d'expression française de l'Ontario* consists of approximately 500 members including lawyers, judges, translators, interpreters, public servants, law professors, and students. The Association aims to preserve and promote the expansion of French within the legal system and ensure the equality of both official languages within the criminal justice system.[47]

3.6.1 Services

Following a review of the Ontario Legal Aid Plan in 1997,[48] the Ontario Legislature passed the *Legal Aid Services Act, 1998*.[49] This legislation created, as of April 1, 1999, a new entity called

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46 La Fédération des communautés francophones et acadienne [FCFA] du Canada. "Francophone Community Profile of Ontario," (Ottawa: FCFA du Canada, 2000).

47 For additional information on the *Association des juristes d'expression française de l'Ontario*, visit the following Web site: http://www.web.net/~ajefo/.

48 See *Report of the Ontario Legal Aid Review: a blueprint for publicly funded legal services* (Ontario, 1997).

49 *Legal Aid Services Act, 1998*, Chapter 26, Statutes of Ontario, 1998.

Legal Aid Ontario (LAO). The organization operates at arm's length from government, but is accountable for the expenditure of public funds. Table 10 summarizes the services currently offered by LAO.

Table 10: Legal aid services in Ontario

Services	Description
Formal representation	Approximately 50 regional offices in Ontario deliver legal aid certificates to eligible individuals, primarily in the areas of criminal law, family law, and immigration and refugee matters.[50] Application Assessment Officers determine eligibility and issue a certificate to those who meet the established criteria. In 2001, LAO issued approximately 32,000 certificates in criminal matters.
Duty counsel	Duty counsel provide summary legal advice to individuals who appear in court without representation. In Ontario, duty counsel are assigned to every criminal court of first instance and to youth and family courts. LAO estimates that duty counsel assisted approximately 600,000 individuals in 2001.[51]
Brydges representation	Police authorities have lists of lawyers who may be contacted by arrested individuals wishing to speak to a counsel. LAO pays these lawyers on a *per diem* basis. In 2001, approximately 40,000 individuals sought *Brydges* representation services.
Advice lawyers	Once or twice a week for two or three hours, legal aid advice lawyers provide summary legal advice in more than 80 communities throughout Ontario.
Clinic law and student legal aid services societies	Seventy community legal clinics across Ontario provide legal assistance in matters related to poverty law areas. In addition, six university-based legal societies provide assistance in a range of legal matters including poverty law, criminal law, or immigration and refugee matters.
Others	LAO is testing various service delivery strategies through a number of pilot projects including the establishment of three family law offices and three expanded family duty counsel offices. LAO maintains a Web site (www.legalaid.on.ca) that provides information on services and eligibility criteria.

3.6.2 Policies and practices relating to bilingual legal aid services

The *Courts of Justice Act*

The *Courts of Justice Act* states: *"the official languages of the courts of Ontario are English and French."*[52] Section 126 of the Act states:

> *"(1) A party to a proceeding who speaks French has the right to require that it be conducted as a bilingual proceeding.*

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50 Certificates may also be issued in civil cases, civil sexual assault, mental health, income maintenance, landlord-tenant, prison appeals in sexual assault cases, workers' compensation, and unemployment appeals.

51 This number includes *Brydges* representation services.

52 See section 125(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C-43.

(2) 1. The hearing that the party specifies shall be presided over by a judge or officer who speaks English and French."

The *French Language Services Act*

The *French Language Services Act* commits the Government of Ontario to ensure that some of its services are provided in French, in accordance with the provisions contained in the Act.

Section 5 of the Act enunciates the right to be served in French:

> *"(1) A person has the right in accordance with this Act to communicate in French with, and to receive available services in French from, any head or central office of a government agency or institution of the Legislature, and has the same right in respect of any other office of such agency or institution that is located in or serves an area designated in the Schedule."*[53]
> (Twenty-three areas of Ontario have been designated.)

Section 1 of the Act defines what is included as a *"government agency"* and confirms that LAO must offer its services in French at its central office in Toronto and at certain designated offices.

Shortly after its establishment in 1999, LAO prepared an implementation plan detailing its strategy to comply with the provisions of the *French Language Services Act*. In accordance with the Act, LAO intends to offer, to the extent possible, services in French at its provincial office and regional offices located in the 23 designated areas of Ontario. This plan covers issues relating to the designation of current and future positions, the hiring of new staff, training, computer equipment, signage, publications, and other means of communication with the public.

In close collaboration with Area Directors, LAO's Communications and Public Affairs branch coordinates the activities of the organization in relation to French services. The provision of French services extends to all key services offered by LAO.

- **Reception and intake services**: LAO's policy is to ensure that clients who visit a regional office located in a designated area will be served in French by the administrative support staff and the Application Assessment Officer. In smaller offices, LAO ensures that at least one position is designated bilingual. All signage and publications must be in both English and French.

[53] Section 5 of the *French Languages Services Act*, R.S.O. 1990, c. F-32.

If a request for services in French is made in a non-designated area, one of the offices with bilingual capacity will be contacted. The intake process will be completed over the telephone, and any information will be provided in this manner.

- **Formal representation**: In Ontario, representation in criminal matters is provided through legal aid certificates. Therefore, it is the responsibility of legal aid clients to find lawyers who do legal aid work. In the event that a client requires assistance finding a lawyer, Application Assessment Officers provide a list of private lawyers located in the community who do legal aid work. Regional offices located in designated areas are expected to provide lists that identify the linguistic capacity of these lawyers.[54]

  In non-designated areas, attempts will be made to find a French-speaking lawyer in that community.

- **Duty counsel**: Duty counsel services are provided through a mix of staff duty counsel and private lawyers who perform duty counsel functions on a *per diem* basis. LAO ensures that at least one of the staff duty counsel working in a designated area is bilingual. To the extent that bilingual private lawyers can be identified, LAO offers additional duty counsel services in French.

  The capacity of Legal Aid Ontario to provide this service in French within non-designated areas largely depends on its ability to find a bilingual lawyer. In the event of a request for French services, attempts will be made to locate a French-speaking lawyer within that community.

- ***Brydges* representation**: LAO has contracted a private firm to administer a toll-free line that arrested individuals may use to receive immediate legal advice. The contractor maintains a panel of lawyers available to respond to these calls. The contract between LAO and the private firm specifies that services must be offered in both English and French.[55]

- **Advice lawyer**: Regional offices offer advice lawyer services by contracting private lawyers on a *per diem* basis.

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54 The lists of lawyers reviewed during our visit to LAO's Ottawa regional office indicated the extent to which lawyers could do French work (conversation/pleading/written).

55 LAO receives reports detailing the profile of callers. The reports for the months of December, January, and February 2002 indicate that an average of 3,867 calls were made per month and that less than 1 percent of these calls were French.

To the extent that bilingual lawyers can be identified, regional offices are expected to offer services in French.

- **Other services**: LAO publishes material available to the clients (including certificates) and the public in both English and French. LAO's Web site is bilingual.

3.6.3 Capacity to deliver bilingual legal aid services

In a province as diverse as Ontario, the capacity to deliver French services varies significantly. Even within the 23 areas designated under the *French Language Services Act*, linguistic profiles range from small communities that are predominantly francophone (such as Prescott) to large centres such as Toronto or Hamilton, where the francophone population constitutes a relatively small group.

The particular structure of legal aid services in Ontario must also be considered when assessing LAO's capacity to deliver French services. Clients retain the primary responsibility of finding a lawyer who will accept legal aid work. LAO may provide some assistance in that regard, such as providing lists of lawyers who have elected to do legal aid work, but it is ultimately the client who contacts and finds his or her lawyer.

As some of the key informants noted, the portion of the service delivery process over which LAO has more direct control (intake and assessment of eligibility) is not necessarily that which clients consider most important. These key informants noted that the true measure of success in delivering French legal aid services largely rests on the capacity of clients to be represented by counsel who are able to communicate in French. The extent to which this objective is met includes considerations over which LAO has little control, such as the willingness of bilingual lawyers to do legal aid work.

The majority of key informants pointed to challenges that affect LAO's overall capacity to offer services and that, in turn, have a direct impact on the provision of French services.

- According to key informants, the current tariff structure does not make legal aid work particularly attractive. Bilingual lawyers will typically be offered employment opportunities that are more lucrative. Staff duty counsel (employees of LAO), have salary ranges that are significantly lower than provincial prosecutors. As a result, many duty counsel, particularly the bilingual ones, attempt to move to prosecutor positions.

Therefore, bilingual lawyers who are new to the profession may decide to do legal aid work, but this will often represent a transition toward other employment. As a result, some communities have no bilingual private lawyers who accept legal aid work.

- In areas where the pool of bilingual lawyers is greater, key informants have noted that LAO is generally in a position to offer French for the entire range of services (reception, intake, *Brydges*, duty counsel, and full representation). These key informants noted that while the capacity is greater, it does not mean that services are systematically offered in the two official languages. Clients may still need to ask to be served in French.

- Some of the key informants noted that police authorities play a central role in providing *Brydges* representation in French by ensuring that accused are informed of the availability of bilingual service.

The capacity of the entire justice system to function in French also affects LAO's capacity to provide its own services in French. Some key informants pointed to the fact that a trial in French can possibly involve significant delays, particularly in communities such as Toronto where francophones are a relatively small group. When timeliness is essential, as is typically the case in criminal matters, considerations other than language preference may predominate.

In order to improve the capacity of some of its regional offices to deliver services in French, LAO established a process by which regional offices collaborate. If, for whatever reason, an office cannot serve a client in French, another office with bilingual staff may provide the service for the client.

3.6.4 Strategies to improve bilingual legal aid services

Effective strategies to improve French legal aid services will require the efforts of a broad range of stakeholders and may require adjustments to some of the basic structures of legal aid in Ontario. Table 11 summarizes key informants' suggestions for improving bilingual services.

Table 11: Suggestions for improving bilingual legal aid services	
Recruitment of bilingual lawyers	One of the most often cited suggestions to improve access to French legal aid services is to make this field of work more attractive for bilingual lawyers. A greater willingness on their part to take on legal aid work would have a positive impact on the availability of French-language services in the areas of *Brydges* representation, duty counsel, and representation at trial. A number of avenues may be explored to attract bilingual lawyers. The following have been suggested by key informants: • The *Association des juristes d'expression française de l'Ontario* could assist LAO in promoting legal aid work and in identifying bilingual lawyers. • LAO could intensify the promotion of employment opportunities in the Ontario legal aid system among students of bilingual law programs in Canada (McGill, University of Ottawa, Université de Moncton). • The tariff system could be reviewed to better reflect the actual work required to serve dispersed communities (such as francophone communities). Certain costs, such as travel, are not adequately covered in the current structure. • More fundamentally, key informants suggested that an increase in the tariffs paid to individuals providing legal aid services (*Brydges*, duty counsel, or full service) would have a positive impact on the availability of French services.
Training	Many key informants noted that the legal terminology in French is difficult to acquire and maintain. LAO has already initiated a training program that allows LAO employees to receive one-on-one, over-the-phone training in French. This course contains 14 one-hour sessions, followed by homework. Providing the lessons over the phone allows greater flexibility in delivery. This type of training could be extended to a broader range of employees and, possibly, to private lawyers who do legal aid work.
Resources	Resources such as legal dictionaries, French computer programs, and one-day refresher workshops could assist Legal Aid staff and private lawyers involved in legal aid to acquire greater French capacity and to maintain their current capacity.
Data collection	LAO's current case management system does not systematically collect data on the use of French legal aid services. LAO is currently developing a new system that could collect this information and have it available for planning.

Key informants were very hesitant to provide an estimate of resources needed to improve the delivery of French services. A change to the tariff structure would involve a significant investment. More modest expenditures could address training, the availability of French-language resources for lawyers, and data collection for resource planning. These might enhance LAO's capacity to offer legal aid services in French but would not remove the more systemic barriers that limit the provision of these services.

3.7 Manitoba

According to 1996 Census data, French was the first language of approximately 49,000 people living in Manitoba (4.5 percent of the total population). The francophone population is dispersed across the province, but the largest contingent is in Winnipeg, mostly in Saint Boniface.

Between 1991 and 1996, the francophone population of Manitoba has fallen from 50,775 to 49,100. The proportion of francophones in the population has also decreased from 7 percent to 4.5 percent. As in most of the other provinces, the number of people who can speak French has increased in the past 50 years. Now almost 10 percent of the Manitoba population (104,000) knows French.[56]

There is an *Association des juristes d'expression française* in Manitoba, with approximately 100 members. Its mandate includes the promotion of French-language services throughout the justice system and increasing the public's awareness of the importance of linguistic rights.[57]

3.7.1 Services

Established in 1972, the Legal Aid Services Society of Manitoba (also referred to as Legal Aid Manitoba) is responsible for the administration of legal aid services in the province.[58] It is a corporate entity governed by an independent Board of Directors, whose members are appointed by the provincial government.

Eleven Legal Aid offices are distributed in four geographical areas:

- *Winnipeg*: Four offices are at the Portage Avenue location (Administrative and Winnipeg Area Office, the Child Protection Law Office, the Public Interest Law Centre, and the Family Law Office). The Winnipeg area also includes one Aboriginal Centre Law Office, one Criminal Law Office, and the University of Manitoba Law Centre.

- *Brandon*: The area has one office, the Westman Community Law Centre.

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56 La Fédération des communautés francophones et acadienne [FCFA] du Canada, "Francophone Community Profile of Manitoba," (Ottawa: FCFA du Canada, 2000).

57 For additional information on the *Association des juristes d'expression française du Manitoba*, visit the following Web site: http://www.ustboniface.mb.ca/cusb/institut/ajefm/.

58 See the *Legal Aid Services Society of Manitoba Act*, R.S.M. 1987, C.L. 105.

- *Dauphin*: The area has one office, the Parkland Community Law Centre.
- *The Pas/Thompson*: The area includes the Northlands Community Law Centre and the Thompson Community Law Centre.

Table 12 summarizes the services currently offered by Legal Aid Manitoba.

Table 12: Legal aid services in Manitoba

Services	Description
Formal representation	Through a mixed system (staff lawyers and certificates), Legal Aid Manitoba provides formal representation in the areas of criminal, family, and poverty laws. Legal Aid Manitoba also represents groups in cases of public interest.
Duty counsel	Legal Aid Manitoba provides legal advice to individuals who appear in court but do not have a lawyer acting for them. This service is available in criminal, youth, and some child welfare courts. Legal Aid offers duty counsel services in approximately 50 communities in Manitoba; 95 percent of these services are provided by staff lawyers.
Brydges representation	Staff lawyers, private lawyers mandated by Legal Aid Manitoba, or paralegals provide legal advice to individuals who are arrested after regular hours. The service is typically provided over the phone and is available from 4:30 p.m. to 8:00 a.m.
Drop-in advice and information	On Tuesdays, Wednesdays, and Thursdays, from 1:30 p.m. to 8:00 p.m., the general public can meet a lawyer or a supervised paralegal at the Administrative and Winnipeg Area Office to discuss any legal problem or to apply for legal aid representation.
Other	Legal Aid Manitoba maintains a Web site (www.legalaid.mb.ca) that provides information on services and eligibility criteria.

3.7.2 Policies and practices relating to bilingual legal aid services

The *Manitoba Act, 1870*

Section 23 of the *Manitoba Act, 1870* states that either French or English *"may be used by any person, or in any Pleading or Process, in or issuing from any Court of Canada established under the* Constitution Act, 1867, *or in or from all or any of the Courts of the Province."* Without relating specifically to legal aid services, this provision creates a legal context in which Legal Aid Manitoba must operate.

The *French Language Services Policy*

Having a more direct application to Legal Aid Manitoba is the *French Language Services Policy* of the Government of

Manitoba.[59] As its title indicates, this is government *policy* and, as such, does not create linguistic rights that are enforceable by the courts.

The purpose of this policy is *"to allow this community and the institutions serving it to access comparable government services in the language of the laws of Manitoba."* It applies, to the extent possible, to all government departments and to a number of public institutions including Legal Aid Manitoba. The policy identifies a number of objectives in relation to French services, including the following:

- French services should be actively offered, which means *"that services in French, whether provided by oral, written or electronic methods, are evident, readily available and easily accessible to the general public, and of comparable quality to those offered in English."*
- All correspondence with individuals or groups should be in the official language preferred by the recipient.
- All forms, identity documents, and certificates intended for the general public should be in a bilingual format.
- Signage, general information, and Web sites should be in both official languages.

As an organization covered by the *French Language Services Policy*, Legal Aid Manitoba has developed several internal practices relating to services in French.

- **Reception and intake services:** An attempt is made to maintain some capacity on site to serve clients in both official languages. In cases where the service is not available on site, arrangements may be made to provide the service in French.
- **Formal representation:** Any legal aid client who is involved in a French-language trial will have representation in French, either by a staff lawyer or a private lawyer operating with a certificate. This may include the translation of material and the services of an interpreter. An exclusively French-language court is available for trials in Saint Boniface, a francophone neighbourhood of Winnipeg.
- **Duty counsel**: An attempt is made to provide some French-speaking duty counsel services, but it is not

[59] This policy is available on the following Web site: http://www.gov.mb.ca/fls/.

guaranteed that these services will be available in the 50 communities where duty counsel services are offered. The current focus is to provide some French capacity in the Winnipeg area.

- ***Brydges* representation**: An attempt is made to provide some French services for *Brydges* representation by including bilingual staff lawyers, private lawyers, and paralegals on the list of counsel available on the phone from 4:30 p.m. to 8:00 a.m.

- **Drop-in centre**: An attempt is made to provide bilingual services at Legal Aid Manitoba's drop-in centre. If no bilingual lawyer or paralegal is available, arrangements may be made to ensure that French services are provided within 24 hours.

- **Other services**: Published material is available to the public in both French and English. The Web site is available in English.

3.7.3 Capacity to deliver bilingual legal aid services

There is a distinction between services that allow for some advanced planning, such as representation at trials, and high-volume services that must be provided on the spot, such as duty counsel and *Brydges*. Our consultations indicate that Legal Aid Manitoba has a capacity to offer French services of the first type, but experiences difficulties offering Brydges services.

- Legal Aid Manitoba does provide formal representation in French, using certificates issued to bilingual private lawyers. While a number of staff lawyers have some French capacity, they do not conduct trials in French. Key informants noted that the number of bilingual private lawyers who accept legal aid work is limited, and their area of expertise may not always coincide with the area of law for which French language is required.

- The availability of French-language resources is limited in duty counsel and *Brydges* representation. Key informants emphasized that the primary purpose of these services, which is to provide limited but immediate assistance, makes it difficult to plan.

Some key informants noted that it is usually up to the client to signal that he or she wishes to be served in French. As previously

mentioned, there is some French capacity at the reception and intake process, but this does not necessarily mean that the services are actively offered in French. This is also true for duty counsel and *Brydges* representation. Unless the client emphasizes that he or she wishes to be served in French, these services will most probably proceed in English.

Key informants pointed to a number of consequences of not providing services in French:

- In many cases, a failure to provide French services in the early stages of legal proceedings will have a direct impact on the capacity of legal aid clients to benefit from services offered in French during full representation at trial. Some key informants noted that referrals done in the context of *Brydges* representation or duty counsel do not necessarily include linguistic considerations. While clients may still request that a bilingual counsel represents them, three key informants suggested that some clients might not feel at ease doing so.

- Key informants emphasized the pivotal role of duty counsel. Legal Aid Manitoba estimates that approximately 34,000 individuals benefited from duty counsel services in 2001, which illustrates the need for this service. The function of duty counsel is to assist an individual who, typically, has little knowledge of court proceedings and, in the case of criminal charges, may not understand all the consequences of his or her early decisions. Key informants noted that the quality of the communication between the client and duty counsel is critical.

- As for full representation at trial, key informants indicated that the current approach in Manitoba, which consists of issuing legal aid certificates to bilingual private lawyers, assures the availability of these services.

3.7.4 Barriers to obtaining bilingual legal aid services

A number of barriers may prevent the provision or expansion of bilingual legal aid services in Manitoba. While Legal Aid Manitoba has control over some of these barriers, there are others over which the organization has little influence. Table 13 summarizes the main barriers identified by key informants.

Table 13: Barriers to the provision or expansion of bilingual legal aid services	
Availability of bilingual lawyers	According to key informants, there are few incentives for lawyers to do legal aid work. The current tariffs are considered low, and the administrative burden that comes with these certificates is significant. It is difficult to find and retain bilingual lawyers. Provincial or federal prosecutions and private practice often attract bilingual lawyers after they have obtained experience as staff lawyers for Legal Aid Manitoba. It should be noted, however, that the salary ranges for Legal Aid staff lawyers and provincial prosecutors are fairly similar. Key informants noted that few bilingual lawyers in Manitoba do criminal law, and a smaller number do legal aid work. Key informants estimated that less than five bilingual criminal lawyers in the province will accept legal aid work.
Low level of demand	Key informants often referred to the low level of demand for French legal aid services. A number of factors were identified in that regard: • Many key informants noted that there appears to be a low level of reported criminal activity among the Franco-Manitoban community. • Because of their capacity to communicate in English, many Franco-Manitobans may be willing to proceed in English for other perceived benefits (avoid delays, greater selection of criminal lawyers, etc). • Some Franco-Manitobans choose to proceed in English in the hope of maintaining a greater degree of anonymity. • Some Franco-Manitobans are more at ease with written documents and the legal vocabulary in English. • Trials in French may involve delays and additional appearances. As a result, some lawyers will recommend to their French-speaking clients that they proceed in English.
Structure of legal aid services	As previously mentioned, the structure of legal aid services can be a barrier to the provision of services in French. Legal aid clients come into the system through a variety of access points (*Brydges* representation at arrest, duty counsel, referrals, etc). The capacity to deliver French services depends on the availability of bilingual staff and the cooperation of other parties such as bilingual lawyers and the police.

3.7.5 Strategies to improve bilingual legal aid services

A study completed in 1988 on French-language services for the Government of Manitoba provides recommendations to improve services, including legal aid services.[60] Also known as the *Chartier Report*, this study recommends the creation of a bilingual court. In order to implement this bilingual court, the Report recommends, among other things, that:

[60] *Above all, Common Sense: Report and recommendations on French language services within the Government of Manitoba* (Manitoba, 1998). This report was prepared by the Commissioner Honourable Judge Richard Chartier.

- *"The Attorney General ensure that at least three of the sixty Crown attorneys be bilingual;"* and
- *"Legal aid ensure that at least two of its criminal lawyers be bilingual."*[61]

The Government of Manitoba, the Government of Canada, the RCMP, the Commissioner of Official Languages, and community organizations are collaborating to implement, in 2002, a bilingual court pilot project in the community of Saint-Pierre-Jolys. This court (judges, prosecutors, court clerks, administrative personnel, etc), which will serve six surrounding communities including Winnipeg, will provide all its services in the two official languages. The purpose of this project is to centralize bilingual services and to ensure that all of these services are actively offered in both English and French. As part of this project, Legal Aid Manitoba is to provide duty counsel services and representation at trial in both official languages.

One important resource available to French-speaking lawyers in Manitoba – as well as in other jurisdictions – is the *Institut Joseph-Dubuc* (IJD).[62] Established in 1984 and now an integrated part of the Collège universitaire Saint-Boniface, the IJD offers translation services and acts as a resource centre:

- The IJD has developed a series of French template documents that lawyers may use in preparing legal documentation and correspondences. These documents can be downloaded, in WordPerfect format, directly from the IJD's Web site, free of charge. They cover a wide range of issues, including civil procedure, family law, and criminal law.

- A lexicon is available to lawyers for assistance in the use of the proper French legal terms in written or oral communications. Any individual can go to the IJD's Web site and consult the lexicon. As an illustration, a user of the lexicon would learn that the French equivalent of "Affidavit of Petitioner's Evidence" should be "Affidavit de la preuve du requérant."

- The IJD organizes training sessions for lawyers who are interested in improving their French capacity. Typically, these training sessions coincide with annual general meetings of the various *Associations des juristes d'expression française*. While these training sessions may be provided in any province, the IJD has historically

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61 Ibid., p.p. 82-83.

62 For additional information, visit IJD's Web site: www.ustboniface.mb.ca/cusb/institut/index.shtml.

focused its activities in the western provinces. The IJD also provides tailored sessions on demand. For instance, the IJD has recently delivered three short sessions (each Friday for three weeks) to provincial Crown Attorneys.

- The IJD publishes *"Point(s) de langue."* These one- or two-page documents offer linguistic advice and tips on the proper use of French in Common Law. The publications are available on the IJD's Web site.

The IJD receives grants from the Department of Justice Canada (the National Program for the Integration of Both Official Languages in the Administration of Justice) and Canadian Heritage. As a result, most of its activities are offered at no or minimal costs.

Finally, key informants identified other initiatives that could improve the delivery of French services. Table 14 summarizes.

Table 14: Suggestions for improving bilingual legal aid services

Training	Many key informants emphasized that having a conversation in French and conducting an entire trial in French requires different skills. Because there is little demand for French-language services, lawyers need ongoing training to maintain their skills.
Hiring of new staff	Legal Aid Manitoba requires new bilingual staff to provide French services. The list of required bilingual positions includes four-to-six administrative staff, a bilingual paralegal and a bilingual staff lawyer, to provide duty counsel and full representation at trial.
French resources and equipment	French computers and software programs French legal resources
Revision of tariff structure	Lawyers who do legal aid work based on a certificate are compensated on a flat tariff basis. Preparing procedures in French typically requires more time. An incentive could be built into the tariff structure to recognize the additional work required for providing French services.

Key informants estimated that an annual budgetary increase of approximately $250,000 would allow Legal Aid Manitoba to improve its capacity to deliver French services. It was emphasized that any additional resources to improve French services should be clearly earmarked for this purpose since competing interests and demands could take precedence over French services.

3.8 Saskatchewan

Currently, French is the first language of close to 20,000 people in Saskatchewan; this number represents approximately 2 percent of the total population. Francophones are dispersed across the

province but are concentrated in two regions, around the village of Batoche and the city of Prince Albert, and around Gravelbourg in south-central Saskatchewan .

Only one-third of all francophones in Saskatchewan live in the urban centres of Saskatoon and Regina; most live in rural areas.

The francophone population has dropped since 1951, when it represented 4.4 percent of the population (36,815 people). The number of people who can speak French has risen only slightly in the past 15 years to 1996, when the Census reportedthat 50,000 people in the province knew French (5.2 percent of the total population).[63]

The *Association des juristes d'expression française de la Saskatchewan* was established in 1987. The Association now has between 40 and 50 members. The objectives of the Association are to promote and make French legal services accessible, and to study and develop French legal documentation.[64]

3.8.1 Services

Founded in 1974, the Saskatchewan Legal Aid Commission administers the provision of legal aid services in Saskatchewan.[65] The Commission has 11 board members and reports to the Minister of Justice. It is responsible for the 13 offices providing legal aid services in criminal and family law across the province. The Commission operates a staff model delivery system.

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63 La Fédération des communautés francophones et acadienne [FCFA] du Canada. "Francophone Community Profile of Saskatchewan." (Ottawa: FCFA du Canada, 2000).

64 For additional information on the *Association des juristes d'expression française de la Saskatchewan*, visit the following Web site: http://www.pajlo.org/francais/quisomme/ajefs.html.

65 Canadian Centre for Justices Statistics, *Legal Aid in Canada: Description of Operations* (Ottawa: Statistics Canada, 1999, Catalogue no. 85-217).

Table 15 summarizes the key services currently offered by the Commission.

Table 15: Legal aid services in Saskatchewan

Services	Description
Formal representation	The coverage provided in criminal matters applies to adults charged with federal indictable offences. Legal aid services are also available for summary conviction and provincial offences, but only when there is a likelihood of imprisonment or loss of livelihood. The program provides assistance for youths involved in any proceedings under the *Young Offenders Act*. Legal aid in civil matters is generally limited to family law.
Duty counsel	Bilingual duty counsel services can be arranged in some provincial courts for those meeting the financial eligibility criteria.
Brydges representation	During business hours, the Commission provides *Brydges* services. After hours, the Commission contracts a private law firm to provide this service.

3.8.2 Policies and practices relating to bilingual legal aid services

The Language Act

Section 11 of *The Language Act*[66] establishes the right to use both English and French before the courts of Saskatchewan:

> *"(1) Any person may use English or French in proceedings before the courts entitled as:*
>
> *(a) the Court of Appeal*
> *(b) the Provincial Court of Saskatchewan*
> *(c) Her Majesty's Court of Queen's Bench for Saskatchewan*
> *(d) the Surrogate Court for Saskatchewan*
> *(e) the Traffic Safety Court of Saskatchewan; or*
> *(f) the Unified Family Court for Saskatchewan."*

The province of Saskatchewan does not have legislation or formal policies that deal specifically with the provision of French legal aid services. However, the Commission acknowledges its responsibility to accommodate requests for French services.

- **Reception and intake services.** The Commission offers primarily English-language services in its 13 regional offices. There is no active offer of French services, but, if required, the Commission will arrange to provide them. In

[66] *The Language Act*, Chapter L-6.1 of the Statutes of Saskatchewan, 1988-89.

addition, the Commission can provide its correspondence in French.[67]

- **Formal representation**. If a client asks to be represented in French, the Commission will offer the service either through the bilingual staff lawyer or through a contractual arrangement with a bilingual private lawyer.
- ***Brydges* representation**. The services are provided in English unless French is required.

3.8.3 Capacity to deliver bilingual legal aid services

The Commission's capacity to deliver services in French depends on the skill and experience required. The bilingual staff lawyer would be able to provide summary advice but would not be comfortable conducting a trial in French, and very few bilingual private lawyers do legal aid work. Key informants emphasized that finding the right mix of experience and French-language capacity is difficult.

The main deficiency in delivering bilingual legal aid service is in conducting trials. Key informants said that training staff lawyers to speak French is not practical because the volume of cases requiring French is too low for them to become proficient.

The Commission recently entered into a partnership with Legal Aid Manitoba to use one of their certificate (*farm-out*) lawyers for a francophone accused from Manitoba. Since the accused was facing a lengthy sentence, it was important not only to have French-language skills but also to have someone with experience in criminal law. There are French-speaking lawyers in Saskatchewan who could conduct a trial, but they do not have the requisite criminal experience.

In Saskatchewan, 71 percent of legal aid clients are Aboriginal, so the Saskatchewan government has established a Cree-speaking Court, and the Commission has designated a Cree-speaking lawyer. In comparison, key informants estimated that the Commission receives only two or three requests annually for French-language services.

[67] This service is provided by the Office of French-language Co-ordination.

3.8.4 Strategies to improve bilingual legal aid services

Key informants noted that flexibility is required when assessing possible avenues to improve French-language services. The Commission must be able to respond to the specific circumstances relating to a request for French services.

One of the recommendations that emerged from our consultations was for the Commission to have a contractual arrangement with a private lawyer on a retainer to provide services in French. Another recommendation was to initiate a pilot project where the *Association des juristes d'expression française* would have a formal agreement with the Commission to provide services in French.

3.9 Alberta

French is the first language of approximately 55,000 people in Alberta, but this comprises only 2 percent of the total population. More than half of the province's francophones live in Calgary and Edmonton. Other significant concentrations are found in Rivière la Paix, Bonnyville, Saint Paul, Plamondon, and Lac La Biche.

The francophone population has been slowly decreasing and, from 1951 to 1996, the percentage of people whose mother tongue is French has dropped from 3.6 percent to 2 percent. Nevertheless, the number of people who speak French has grown considerably since 1951; in 1996, more than 180,000 people (6.7 percent of the total population) spoke French.[68]

The *Association des juristes d'expression française de l'Alberta* has approximately 35 members and works to promote French legal services, increase their accessibility, and develop reference materials in French.[69]

3.9.1 Services

An agreement between the Law Society of Alberta and the provincial Attorney General, signed in 1970, gives the Law Society authority over the establishment, maintenance, and operation of a legal aid plan. There is no formal legal aid

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68 La Fédération des communautés francophones et acadienne [FCFA] du Canada, "Francophone Community Profile of Alberta," (Ottawa: FCFA du Canada, 2000).

69 For additional information on the *Association des juristes d'expression française de l'Alberta*, visit the following Web site: http://www.francalta.ab.ca/juristes/default.htm.

legislation in the province. Incorporated in 1973, the Legal Aid Society is responsible for the administration of the legal aid plan on behalf of the Law Society.[70]

The province is divided into eleven regions and grouped into a northern and a southern district. Legal aid services are delivered through a primarily judicare model. However, staff lawyers in Edmonton, Calgary, Red Deer, and Siksika Nation provide a variety of services (duty counsel and other).

Table 16 summarizes the services provided by the Legal Aid Society of Alberta.

Table 16: Legal aid services in Alberta

Services	Description
Formal representation	Coverage is provided for adults convicted of indictable offences and summary offences where there is likelihood of imprisonment. Crown-initiated appeals are covered for indictable offences and defence-initiated appeals are covered if the case has merit. Family and civil matters are also eligible for coverage.
Duty counsel	Criminal duty counsel is provided at all courts, primarily to individuals in custody. Duty counsel may also assist individuals who are not in custody but are appearing in court for a first time. Staff lawyers provide duty counsel services in Red Deer (criminal and civil), Edmonton, and Calgary. Duty counsel services are also provided for appearances before the Mental Health Review Panel.
Brydges representation	The Legal Aid Society distributes to the police rosters of lawyers who are available to take *Brydges* calls.
Family Law Office	This office was created in 2001 as part of a pilot project. Salaried staff lawyers in Edmonton and Calgary assist individuals who have been referred by the Legal Aid Society with family law matters. In cases of conflict, legal aid certificates are issued to members of the private bar.
Youth Criminal Defence Office	Since 1993, staff lawyers at the Youth Criminal Defence Office have provided legal aid services in Edmonton and Calgary. Staff lawyers provide duty counsel services, *Brydges* representation, and full representation to youth charged with criminal offences under the *Young Offenders Act*. In the event of conflict, legal aid certificates are issued to members of the private bar.

3.9.2 Policies and practices relating to bilingual legal aid services

The province of Alberta does not have any constitutional obligations to provide services in French; however, section 4(1) of the Alberta *Languages Act* establishes the right to use English and French before the courts as follows:

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70 For a description of the Legal Aid Society and its services, see the following Web site: http://www.legalaid.ab.ca.

> *"Any person may use English or French in oral communication in proceedings before the following courts:*
>
> *(a) the Court of Appeal of Alberta;*
> *(b) the Court of Queen's Bench of Alberta;*
> *(c) repealed RSA 2000 c16 (Supp) s50;*
> *(d) the Provincial Court of Alberta."*

Although this does not apply to government organizations or legal aid services, it creates an incentive for the Legal Aid Society to provide services in both official languages, as does s. 530 of the *Criminal Code*.

There are currently no formal policies or practices within the Legal Aid Society of Alberta for the provision of legal aid services in French. When required, French legal aid services will be provided by members of the private bar, acting on certificates, or through interpreters. Requests for services in French are handled in the same way as requests for services in any language other than English.

- **Reception and intake services**. Throughout the province, there are three regional offices with limited French capacity. If available staff cannot respond to a request for French-language services, the Legal Aid Society will require that the unilingual French-speaking person obtain an interpreter.
- **Formal representation.** The Family Law Office and the Youth Criminal Defence Office do not have any French-speaking lawyers on staff. Lawyers in private practice who accept legal aid certificates are identified by language. Attempts will be made to assign a French-speaking lawyer to a client who makes the request for one.
- **Duty counsel.** There is no policy on the provision of duty counsel services in French. These services are provided in English.
- ***Brydges* representation.** There are no policies regarding the provision of *Brydges* representation in French. Essentially, services are provided in English.

3.9.3 Capacity to deliver bilingual legal aid services

The Legal Aid Society has no legislative or policy obligations to provide services in French. In light of this, our assessment focuses on documenting the current capacity of the organization to provide such services and determining whether this capacity adequately meets the needs of the minority official language group.

The Legal Aid Society does not currently employ any French-speaking staff lawyers, and only a limited number of front-end staff have French capability. In assessing the level of services provided in French by the Legal Aid Society, key informants highlighted a number of considerations:

- The demand for French legal aid services is very low. There are requests for services in languages other than English, but these requests are usually not for French.
- Francophones in Alberta do not try to get services in French because they are used to being served in English only. Actively offering legal aid services in French might uncover whether the need is actually greater than perceived.
- Franco-Albertans often wish to speak to a lawyer who is fluent in French, but they do not necessarily want to proceed before the courts in French. The reason is that while they are more comfortable in their first language, many are not familiar with legal terms in French.
- A lawyer's capacity to speak and understand French does not translate into a lawyer's capacity to conduct a trial in French.

3.9.4 Strategies to improve bilingual legal aid services

In light of the very low demand for French legal aid services, there is no perceived gap or perceived pressing need to improve service delivery in French. Some key informants did indicate, however, that front-end services should be improved, particularly where immigration matters are concerned, since a number of individuals requiring assistance with immigration matters originate from francophone countries. Other priorities identified by key informants are *Brydges* representation and duty counsel services.

Recommended strategies for improving the capacity to provide legal aid services in French include French-language training for lawyers and staff, and designated bilingual positions. Key informants noted, however, that there are important systemic barriers to improving the delivery of French legal aid services:

- The French language is not treated as a priority by the province or by the legal aid system. It is just one of many other languages that must be accommodated.

- The justice system functions in English only. It is very difficult for lawyers to provide legal aid services in French when the system does not support it.

3.10 British Columbia

According to 1996 Census data, there are 56,755 people in British Columbia with French as a mother tongue (1.5 percent of the total population). Francophone communities are dispersed throughout the province, and nowhere in the province do they represent a significant proportion of the population. The majority of francophones are located in Vancouver and Victoria, yet they constitute less than 2 percent of the total population in each of these urban centres.

Although the proportion of British Columbia residents with French as a mother tongue has decreased from 1.7 percent in 1951 to 1.5 percent in 1996, the actual numbers indicate an increase of people in British Columbia with French as a mother tongue (43,415 in 1981 compared to 56,755 in 1996). Additionally, the number of people who know French has grown; 6.8 percent of the population (250,000 people) say that they can speak French.[71]

In January 2001, the *Fédération des francophones de la Colombie-Britannique* (FFCB) announced the creation of the *Association des juristes d'expression française de la Colombie-Britannique*. The Association consists of approximately 35 members including lawyers, judges, and translators. Its mandate is:

- To develop and implement legal services in French in British Columbia and ensure the respect of linguistic rights.
- To contribute to the professional development of French-speaking lawyers and facilitate the practice of law in French as well as the access of its services to francophones in the province.
- To examine issues relating to linguistic rights and advise on the steps to be taken for the development of these rights.[72]

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71 *La Fédération des communautés francophones et acadienne [FCFA] du Canada* (2000). "Francophone community profile of British Columbia." Tyrell Press, Ottawa.

72 For more information on the *Association des juristes d'expression française de la Colombie-Britannique*, visit the following Web site: http://www.pajlo.org.

3.10.1 Services

The *Legal Services Society Act* was passed in 1979, thereby establishing the Legal Services Society (hereafter the Society) as a corporation independent of both the legal profession and the provincial government. The objectives of the Society include ensuring the provision of legal services to individuals without the financial means to procure their own lawyer and the provision of education, advice, and information about the law to British Columbians.

Services are provided through a mixed delivery model. There are currently 44 offices across the province, a number of branch offices, community law offices, and Native community law offices. The branch offices employ Legal Services Society personnel, while community law offices and Native community law offices are governed by their own boards of directors.

The Society's Board of Directors is comprised of 15 members. The Board elects an executive committee and may also appoint a Chief Executive Officer responsible for supervising, managing, and administering the legal aid plan. Pursuant to the Act, the Lieutenant Governor in Council can appoint a trustee to replace the Board of Directors in conducting the affairs of the Society if it is perceived as being in the public's interest and necessary to ensuring continued and effective service delivery.[73]

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[73] Canadian Centre for Justice Statistics, *Legal Aid in Canada: Description of Operations* (Ottawa: Statistics Canada, 1999, Catalogue no. 85-217).

Table 17 describes the services currently provided by the Legal Services Society.

Table 17: Legal Aid Services in British Columbia

Services	Description
Formal representation	*Criminal matters*: Legal aid is provided to individuals who are charged with provincial and federal offences where there is a likelihood of imprisonment. Most locations used a mixed model delivery system. *Immigration matters*: In April 1991, an immigration tariff was created, and in January 1995, the Society established a staffed Immigration and Refugee Law Clinic in Vancouver. *Civil matters*: Legal aid service is provided by staff lawyers only and does not cover personal injuries cases. The BC Human Rights Commission funds a tariff applicable to matters recognized by the Commission. *Family matters*: Legal aid is available when financially eligible people have serious family problems (risk of abuse) or may be imprisoned as a result of the legal issue. If the legal problem affects livelihood or ability to protect and support families, services will be provided. In 1994, the Family Case Management Program (FCMP) was implemented, directing limited resources to cases that will result in immediate, tangible results to clients and/or families.
Duty counsel	These services are available in most criminal courts and some youth courts. Generally, the services are not available in family court with the exception of some apprehension cases. Pre-court duty counsel is provided to individuals in custody and, time permitting, to individuals not in custody on a first appearance. These services are provided by staff and private bar lawyers.
Brydges representation	*Brydges* representation is available on a 24-hour basis through a phone line. The service is contracted to a telephone service, and private bar lawyers provide representation.
Information services	The Legal Information Services Department provides education, advice, and information about the law through three programs: *Public Legal Education (PLE)*: This includes workshops, booklets, and audio-visual productions. Additionally, grants are provided to community groups. *Library Program* and *Publishing Program*: Through the operation of the Legal Resource Centre, these programs provide a research facility and telephone information service on the law and legal services. The Centre also provides reference services, funding, staff training, and library consultation.
Other services	*Judicial Appeals*: The Appeals Department determines whether the Society will support an appeal, coordinates approved appeals, and administers appellate legal services. *Native Program*: This ensures that the Society is sensitive and responsive to legal service needs of Aboriginal people. Focuses on improving Aboriginal people's access to legal programs and services. *Prisoners' Legal Services*: This handles prison and parole-related legal issues and provides a range of services (summary advice to legal representation). The Society provides partial funding to the Community Legal Assistance Society (CLAS), which does test case and law reform work in the areas of poverty law, human rights, and disability law. In addition, the Society supervises the Law Students' Legal Advice Program (LSLAP), and provides services under the *Mental Health Act*.

The province is presently facing severe economic challenges that have resulted in significant budget cuts to the delivery of legal aid services. The Legal Services Society is undergoing massive restructuring, and all services are affected. In February of this year, a trustee was appointed to replace the Board of Directors in order to implement the new budget and reorganize legal aid services. Legal aid funding will be cut by approximately 40 percent over three years, thereby closing 60 Legal Aid offices across the province, laying off 74 percent of the staff, eliminating public legal education grants, and terminating grants to local libraries. By September 2002, a central call centre, located in Vancouver, and seven regional offices will replace the Legal Aid offices.

As of April 1, access to legal aid services will be severely restricted. Legal representation for family law cases where violence is not involved and legal representation for poverty law cases will be gradually phased out, ending in September 2002. Services for criminal law matters, immigration, mental health cases, young offenders, and child protection matters will be maintained. Public Legal Education will consist mainly of electronic services such as the Society's Web site, a new version of LawLine, some printed documentation, and some community advocate training.

The Society has not yet determined whether services such as out-of-custody duty counsel and continued coverage of those existing referrals for family cases will continue after September 2002.[74]

3.10.2 Policies and practices relating to bilingual legal aid services

The province of British Columbia has no legislation or formal policies pertaining to French legal aid services. As with any language other than English, services are provided on an *ad hoc* basis. Our consultations indicate that interpretive services are used when no French-speaking staff are available. The Society does not have any hiring policies based on linguistic capacities.

- **Reception and intake services.** If a client requires assistance in French, he or she must bring an interpreter (provided at the Society's expense) unless someone in the office can speak sufficient French. The intake process

[74] For more information on the restructuring of legal aid services, visit the following Web site: www.vcn.bc.ca/lssbc.

includes an interview, and, therefore, the client and the intake personnel must be able to communicate effectively.

- **Formal representation.** Our consultations indicate that many clients have their own lawyers. In the event that a client needs to obtain a lawyer, the Society will respect the client's language preference. If the Society does not have a French-speaking lawyer on staff, it will turn to the private bar in that community. If no French-speaking lawyers are available, interpretive services will be provided.

- **Duty counsel.** The Society does not automatically offer services in French to individuals requiring duty counsel services. Interpreters are available at the courthouse.

- ***Brydges* representation.** Lawyers in private practice provide *Brydges* representation. According to key informants, the Society does not control this service, but the contract stipulates that interpretive service must be available.

3.10.3 Capacity to deliver bilingual legal aid services

Our key informant interviews indicate that legal aid services are not easily accessible in French. Although the Society attempts to meet the needs of French-speaking clients, its capacity to offer its services in both official languages is limited. According to key informants, there is one bilingual lawyer at the Immigration and Refugee Law Clinic. The Society does not employ any family lawyers who are French-speaking. Of the 28 criminal staff lawyers, four are bilingual. Additionally, two staff lawyers who provide services in poverty law are functionally bilingual. Bilingual staff lawyers do not travel to other communities to provide French legal aid services. The Society aims to meet the standard imposed by s. 530 of the *Criminal Code* but does not go beyond that requirement.

The LawLine does not employ any bilingual staff. Only two staff members who take calls have any French capacity; they can answer some basic questions in French and provide very basic directions. Intake staff in Vancouver do not have any French-language capacity.

In light of the Society's limited capacity to provide services in French, interpreters are widely used and heavily depended upon. Whereas a French-speaking lawyer can be obtained from the community, intake and information services require the assistance

of interpreters. Extra efforts are required in order for a client to receive services in French, and delays are inevitable. Key informants have identified a number of issues and concerns regarding the use of interpretive services:

- The use of interpreters is not ideal because the services are not provided directly and always involve delays.
- There are benefits to direct communication with a lawyer and other Legal Aid staff. Speaking one's own language and being understood in that language has greater impact.
- It is difficult to transmit the exact meaning of what is being said through an interpreter. In law, information must be as factual as possible.

Key informants noted that it is important to provide legal aid services in French because French is an official language of Canada. Access to direct services in French ensures communication that is more effective, ensures a client's better understanding of the proceedings, and ensures a higher degree of confidence that miscommunications will not occur. We were told that clients feel a sense of relief when they are able to access French legal aid services because it facilitates the process. These clients are already in very difficult situations, and not being able to communicate in the language in which they are most comfortable creates additional stress. Many become more insecure when they are unsure of being fully understood.

The most important gaps in French legal aid services identified by key informants include:

- The society's inability to provide immediate assistance and advice in French (in *Brydges* representation and duty counsel services). Our consultations indicate that the RCMP must sometimes act as interpreters to clients who are arrested and detained. This could potentially be a conflict of interest.
- The lack of information and documentation in French. Documents, brochures, and pamphlets are often translated in a number of other languages, but French is usually not a priority. It is important that the francophone population of British Columbia receive at least the most basic information in their language.
- The difficulty of receiving any type of assistance or information in French.

Considering the current political and economic context of the province, French-language services are certainly not a priority. It was noted that a number of other gaping holes in legal aid services must be addressed before the issue of language can be considered. The Society is currently struggling with budget cuts and attempting to maintain a minimum level of service. Key informants identified several other key issues and barriers to consider in the expansion of legal aid services in British Columbia:

- There is very little demand for services in French. The cultural and ethnic composition of British Columbia is diverse, and other languages are often much more in demand (Asian and South Asian languages, Spanish, Hindi, Punjabi). Some key informants indicate that an active offering of services in the official language of the minority might have an impact on the demand for such services; if people do not know that services are available in French, they will not ask for them.

- There is a lack of French-speaking lawyers. Many lawyers and staff speak other languages, but it is difficult to locate and hire French-speaking lawyers. The linguistic profile of the population is currently shifting because of increased popularity of French immersion programs. However, this difference will probably not be felt for another 15 years.

- In addition to a lack of lawyers who speak the official language of the minority, there is also a lack of paralegals, secretaries, and other support staff who speak French. It is difficult for lawyers to practise law in French if they do not have the adequate and necessary support.

- Most senior lawyers speak English only. Some French-speaking lawyers lack the expertise, specialization, or experience to conduct a trial in French. This could potentially influence a French-speaking client's choice of lawyer.

- The Legal Services Society does not offer French training to lawyers and other Legal Aid staff.

- British Columbia has always had a problem with unrepresented accused. The reductions in resources provided to Legal Aid have aggravated this problem. In response, many community organizations have set up *pro bono* legal clinics. These clinics, however, cannot guarantee legal services in French.

3.10.4 Strategies to improve bilingual legal aid services

Key informants identified various strategies for improving the delivery of French legal aid services. According to our consultations, one of the priorities appears to be the development of a policy within the Society for the provision of legal aid services in both official languages. Many key informants believe that an active offer of the services is necessary and that the offer must be done systematically and consistently. This suggestion assumes that services are indeed available in the official language of the minority.

Table 18 summarizes the suggested avenues to be taken.

Table 18: Suggestions for improving bilingual legal aid services	
Systematic offering of French legal aid services	Policies should be developed to ensure the provision of French legal aid services. Different ways of offering the services and making people aware of the existence of services include: • Upon arrest, police could inform the accused that he or she can request French legal aid services. • Interpreters at the courthouse should be consistent in offering legal aid services in French. • Intake and reception staff should offer the services. • The Society should hire a certain number of lawyers and other staff with French capacity.
Sensitizing the population to the importance of French legal aid services	The general population should be made aware that they can ask for services in French; services should be increasingly visible. In addition to sensitizing the general population, interpreters, criminal justice workers, Legal Aid staff, and others need to be aware of the importance of providing legal aid services in both official languages.
Use of the francophone network	The francophone community network can be used to disseminate information on French legal aid services. Basic information about legal aid services needs to be available in French. The *Association des juristes d'expression française de la Colombie-Britannique* should collaborate with the Society to identify French-speaking lawyers. They act as the point of contact for many francophones requiring legal services in French.
Training	French training should be made available for Legal Aid lawyers, private bar lawyers, and other Legal Aid staff. Some lawyers and staff members have some knowledge of French and would only need to upgrade their skills. Training in the form of workshops would be very helpful. Key informants identified the *Institut Joseph-Dubuc*[75] as a possible source of training. In addition, *Éducacentre* currently provides French-language training to lawyers and other professionals in the justice system. *Éducacentre* currently provides training to a number of government departments and to a few private law firms. According to our consultations, the organization charges approximately $45 per hour for this type of training (group or tutorial).

[75] See Section 3.7 on Manitoba for more information on the *Institut Joseph-Dubuc*.

It appears important that the Legal Services Society first recognize French as an official language of Canada. Basic information on legal aid services should be available to the French population of the province. The francophone community network, including the *Association des juristes d'expression française*, appears to be an important resource for the dissemination of information and for the improvement of legal aid services in the official language of the minority.

4.0 Survey of clients and potential clients of Legal Aid

Between April 18 and 23, 2002, PRA contacted 125 respondents living in 11 communities. These included two predominantly anglophone communities in Québec and nine predominantly francophone communities in Nova Scotia, New Brunswick, Ontario, Manitoba and Alberta. Using the survey appended, individuals were asked their first language and were screened by their responses to be included in our sample (see Table 19).

We enrolled 24 individuals in Québec who reported English as their first language.

We enrolled 101 individuals outside Québec who reported French as their first language.

PRA conducted interviews using its computer-aided telephone interviewing (CATI) system and a staff of bilingual interviewers. The English and French surveys were stored separately in the CATI system, ensuring that all Québec interviews would be conducted in English and all other interviews would be conducted exclusively in French.

Table 19: Location of respondents, by community (n=125)

Area	Number of respondents	percent
Clare, NS	17	14 percent
Ile Madame, NS	9	7 percent
Campbellton, NB	12	10 percent
Restigouche, NB	11	9 percent
Hudson, QC	10	8 percent
Lennoxville, QC	14	11 percent
Hearst and Kapuskasing, ON	13	10 percent
Prescott-Russell, ON	6	5 percent
St. Pierre-Jolys, MB	12	10 percent
Rural Municipality of Montcalm, MB	5	4 percent
Falher, AB	16	13 percent
Total	**125**	**101 percent**

Note: Percentages may sum to more than 100 percent due to rounding

4.1 Respondents in profile

Table 20 on the next page provides a linguistic profile of respondents.

Among the 101 francophone respondents outside Québec:

- Nearly nine out of ten (89 percent) said that they *usually speak French at home*. About half described their neighbourhood as *mostly francophone* (52 percent), while roughly a third (35 percent) described it as *equally French and English*.

- About three-quarters (76 percent) were able to communicate readily in English, with 48 percent describing their ability to communicate in the language as *excellent* and 29 percent as *good*. One in seven (14 percent) said that he or she had *limited* ability in English, and one in ten (10 percent) said that he or she *could not communicate* in English at all.

- Approximately one in five (18 percent) has ever *needed legal services of any kind*.

Among the 24 anglophone respondents in Québec:

- All 24 (100 percent) said that they usually speak English at home.

- Two-thirds (67 percent) described their neighbourhood as *mostly anglophone*, and one-third described it as *equally French and English*. None lived in a *mostly francophone* area.

- Sixty-three percent (63 percent) said that they were able to communicate readily in French: 17 percent (n=4) described their French-language skills as *excellent*, and 46 percent (n=11) described them as *good*. Nearly four in ten (38 percent) said that they had trouble communicating in French: 33 percent (n=8) of those described their skills as *limited* and 4 percent (n=1) were *unable to communicate* in French at all.

- Half (50 percent) said that they ever *needed legal services of any kind.*

Table 20: Linguistic profile of respondents, by first language			
	English as first language (n=24)	**French as first language (n=101)**	**All respondents (n=125)**
English as first language	100%	--	19%
French as first language	--	100%	81%
Respondent's first language is usually spoken at home	100%	89%	91%
Description of neighbourhood			
Mostly francophone	--	52%	42%
Mostly anglophone	67%	14%	24%
Equally French and English	33%	35%	34%
Ability to communicate in the other official language			
Excellent	17%	48%	42%
Good	46%	29%	32%
Limited	33%	14%	18%
Can't communicate	4%	10%	9%
Ever needed legal services of any kind?			
Yes	50%	18%	24%
No	50%	80%	74%
Don't Know / No Response	--	2%	2%
Note: Totals may not sum to 100% due to rounding.			

4.2 Use of legal services

Respondents were asked where they went to obtain legal services. Table 21 shows that more than half of those who used legal services engaged a private lawyer. Only four individuals reported using legal aid. Consequently the survey questions specifically pertaining to the use of legal aid services are not reported.

Table 21: Use of legal services *Q8. Where did you go to get the legal services that you needed?*			
	Anglophone respondents (n=12)	**Francophone respondents (n=18)**	**All respondents (n=30)**
Legal aid office	1	3	13%
Private lawyer	9	10	63%
Community legal clinic	-	3	3%
Other	4	1	17%
Don't Know / No Response		2	6%
Note: Totals sum to more than 100% due to more than one response provided in two cases.			

4.3 Likelihood of requesting a trial or hearing to be held in respondent's first language

Respondents were asked which language they would want their court hearing or trial held in if they had a legal problem and needed to go to court. Nearly all anglophone respondents (24 out of 25) said that they would want the trial or hearing to be in English. One respondent said that either language would be acceptable.

Francophone respondents were almost equally as likely to want the trial or hearing to be held in French (45 percent) as in English (43 percent), and 12 percent said that either one would be suitable.

Overall, 53 percent of respondents preferred proceedings to be in English, 36 percent in French. Ten percent would accept either language, and one percent had no opinion.

Table 22: Preferred language for court hearing or trial to be held in *Q22. In general, if you had a legal problem and needed to go to court, in what language would you want the court hearing or trial to be held?*			
Language	**Anglophone respondents (n=24)**	**Francophone respondents (n=101)**	**All respondents (n=125)**
English	96%	43%	53%
French	--	45%	36%
Either one	4%	12%	10%
Don't Know / No Response	--	1%	1%
Note: Totals may not sum to 100% due to rounding.			

4.4 Importance of having a lawyer who is able to speak the respondent's first language

Both anglophone and francophone respondents considered it important to have a lawyer who is able to speak to them in their first language.

- Seventy-four percent (74 percent) of respondents (96 percent of anglophones and 69 percent of francophones)

said that it was important to have a lawyer who is able to speak to them in their first language.

- Twenty-two percent (22 percent) of all respondents (27 percent of francophones and 4 percent of anglophones) said that it was not important.

- Three percent (3 percent) of respondents, all francophones, had no opinion.

4.5 Factors in choosing a lawyer

Respondents were asked how strongly they agreed or disagreed that the following characteristics would affect whom they would choose to represent them in legal proceedings:

- The lawyer's ability to speak the respondent's first language.

- The lawyer's reputation, even if unable to speak the respondent's first language.

- The lawyer's ability to speak to the respondent in his or her first language in a case being conducted in the other language.

Fifty-six percent (56 percent) of respondents agreed that they would *choose a lawyer to help them because he or she speaks their first language*. This was particularly important among anglophone respondents, with 71 percent agreeing. Francophones had mixed feelings on this issue, with 52 percent agreeing and 38 percent disagreeing.

Fifty-four (54 percent) of respondents agreed that they would choose a lawyer *because of his or her reputation*, even if the lawyer did not speak the respondent's first language. Opinions between the two language groups differed significantly, with 59 percent of francophones agreeing with the statement compared to 29 percent of anglophones.

Fifty-four percent (54 percent) also agreed that they wouldn't mind their case going to court in the other official language, as long as they could speak to their lawyer in their first language. There was little difference between anglophones and francophones in this regard, with about half of both groups (54 percent of francophones, 50 percent of anglophones) agreeing.

Table 23: Factors in choosing a lawyer, by language			
	Anglophone respondents (n=24)	**Francophone respondents (n=101)**	**All respondents (n=125)**
Q24A. "I would choose a lawyer to help me because he speaks my first language."			
Strongly disagree	8 percent	21 percent	18 percent
Somewhat disagree	17 percent	17 percent	17 percent
No opinion	4 percent	9 percent	8 percent
Somewhat agree	17 percent	17 percent	17 percent
Strongly agree	54 percent	36 percent	39 percent
Q24B. "I would choose a lawyer because of his/her reputation, even if the lawyer only speaks (other language)."			
Strongly disagree	46 percent	20 percent	25 percent
Somewhat disagree	17 percent	13 percent	14 percent
No opinion	8 percent	7 percent	7 percent
Somewhat agree	17 percent	19 percent	18 percent
Strongly agree	13 percent	41 percent	35 percent
Don't Know / No Response	--	1 percent	1 percent
Q24C. "I don't mind my case going before the court in (other language), as long as I can speak to my lawyer in my first language."			
Strongly disagree	42 percent	20 percent	24 percent
Somewhat disagree	8 percent	10 percent	10 percent
No opinion	--	14 percent	11 percent
Somewhat agree	21 percent	20 percent	20 percent
Strongly agree	29 percent	36 percent	34 percent
Don't Know / No Response	--	1 percent	1 percent
Note: Totals may not sum to 100 percent due to rounding.			

4.6 Effect of long delays in contacting a lawyer who is able to speak the respondent's language

Respondents were asked what they would do if they were faced with long delays in contacting a lawyer who was able to speak the respondent's first language.

About half of all respondents (48 percent) said that they would *contact a lawyer who spoke the language of the majority* instead. However, francophones were much more likely to contact an English-speaking lawyer (53 percent) than anglophones were to contact a French-speaking lawyer (29 percent). This reflects the fact that francophones are more likely to be bilingual than anglophones.

Thirty-seven percent (37 percent) of respondents said that they would *continue to wait* until a lawyer who was able to speak their first language became available. Francophones were somewhat more likely to wait (39 percent) than were anglophones (29 percent).

Ten percent (10 percent) would *use the services of an interpreter, if available.* This was the preferred choice of anglophone

respondents, cited by 33 percent. Francophone respondents were less inclined to use an interpreter, with only 4 percent willing to do so.

Table 24: Expected results of long delays in contacting a lawyer able to speak respondent's first language, by language

	Anglophone respondents (n=24)	Francophone respondents (n=101)	All respondents (n=125)
Contact a lawyer speaking the language of the majority	29 percent	53 percent	48 percent
If available, use the services of an interpreter	33 percent	4 percent	10 percent
Continue to wait	29 percent	39 percent	37 percent
Don't Know / No Response	8 percent	5 percent	6 percent

Note: Totals may not sum to 100 percent due to rounding.

5.0 Summary of findings

This section presents the summary of findings that emerged during the course of the study. Before addressing specific issues, we present in Table 25 an overview of some of the characteristics of legal aid systems in the 10 provinces and of the policy environment in which they operate.

Table 25: Summary profile per province

Characteristics	NF	PE	NS	NB	QC	ON	MB	SK	AB	BC
Languages of the courts										
- Constitutional right to use both official languages in all courts				X	X		X			
- Legislative right to use both official languages in all courts						X		X	X[76]	
- Legislative right to a criminal trial in either official language	X	X	X	X	X	X	X	X	X	X
Languages of legal aid services										
- Legislative right to receive legal aid services in the official language of the minority		X		X		X				
- Government policy concerning the provision of legal aid services in the language of the minority							X			
Service delivery structure										
- Legal aid systems with a predominantly staff model	X	X	X				X	X		
- Legal aid systems with a predominantly judicare model				X		X				
- Legal aid systems with a mixed model					X				X	X
- Centralized toll-free number for *Brydges* representation	X		X		X	X				X
- Bilingual Web site					X	X				
Other information										
- Provinces with an *Association des juristes d'expression française*			X	X		X	X	X	X	X

[76] The right to use French in Alberta courts is limited to oral communications.

5.1 Legislative context

Our consultations indicate that the provision of legal aid services in the official language of the minority is influenced by two types of legislative provisions:

- *General linguistic provisions*: A number of constitutional and legislative provisions give Canadians the right to use both English and French before some courts. Typically, these provisions do not directly apply to legal aid services and, therefore, do not create an obligation for legal aid to provide its services in the two official languages. However, these provisions create an incentive for legal aid plans to offer some services in the language of the minority.

- *Provisions specific to legal aid*: In some jurisdictions (PEI, New Brunswick, Ontario, and Manitoba), legislation or policies have been established to govern the provision of government services in the official language of the minority. In all cases, the parameters of the legislation/policy are such that legal aid services are included.

5.2 Policies in place

Generally, legal aid plans across Canada have policies, formal or informal, regarding the provision of services in the official language of the minority.

- Legal aid plans do attempt to provide full representation in the language of the minority when a client makes a request to this effect. In a judicare model, this service is provided by a private lawyer who speaks the official language of the minority. In a staff model, the service is sometimes provided by a bilingual staff lawyer, but is more often provided by a bilingual private lawyer with a legal aid certificate.

- Legal aid plans also attempt to provide some duty counsel services and *Brydges* representation in the official language of the minority. However, these two areas are challenging, and, often, the provision of bilingual services is non-existent.

5.3 Key barriers to services in the language of the minority

Key informants pointed to several barriers that may prevent the provision of legal aid services in the official language of the minority.

From the client's perspective, a lack of awareness of what services are available in both official languages, combined with the fact that there is typically no active offering of services in the official language of the minority, may limit the actual demand for such services. In this regard, survey findings indicate that respondents consider it important to have a lawyer speak to them in their first language; this is particularly so for anglophone respondents. Furthermore, francophones were more likely to contact an English-speaking lawyer when faced with long delays in obtaining a French-speaking lawyer than anglophones were to contact a French-speaking lawyer when faced with delays in obtaining an English-speaking lawyer; anglophone respondents were also more likely to agree to the use of interpretive services.

Additionally, legal aid clients may be intimidated by court proceedings and do not feel at ease requesting services in the official language of the minority. Some key informants were of the opinion that the justice system as a whole does not encourage the use of the official language of the minority. This is an important consideration because, as demonstrated by the survey of clients and potential clients, nearly all anglophone respondents indicate a preference for a trial in English. Francophone respondents were less adamant about the language of the trial; they were almost equally likely to want the trial to be held in English as in French. However, about half of both groups indicated a willingness to proceed in court in the official language of the majority as long as their lawyer had the capacity to communicate with them in their first language.

From the perspective of legal aid plans, they face several organizational barriers in attempting to offer their services in the two official languages:

- In a judicare model, legal aid plans rely on the willingness of bilingual private lawyers to do legal aid work. However, many of the bilingual lawyers tend not to do legal aid work or may not work in fields such as criminal law where the need for bilingual services may be particularly significant.

- In a staff model, it may be difficult for legal aid plans to recruit and keep bilingual lawyers. These lawyers tend to move toward more lucrative positions in the private sector or in other government departments.

- While lawyers may have some capacity to communicate in the official language of the minority, they often feel uncomfortable proceeding through an entire trial in that language. The level of language skills required in formal court proceedings may be difficult to maintain if used rarely.

- Duty counsel services are not only high volume in nature but also, generally, provided in all criminal court locations (some jurisdictions offering the service in family and youth court as well). In this respect, organizing the provision of services in the official language of the minority can be difficult. One approach taken in some jurisdictions is to focus the provision of these services in areas where official minority language groups are more prominent.

- *Brydges* representation presents many of the same challenges as those associated with duty counsel. *Brydges* representation is typically provided over the phone and involves a rotation of available lawyers. Again, bilingual services depend on the willingness of bilingual lawyers to be put on the list. Police authorities also play a pivotal role in assuring that clients requesting the service are made aware of the availability of bilingual lawyers.

- More generally, legal aid services in the official language of the minority may be competing with other demands, including services in other minority languages. Funding constraints faced by legal aid systems across the country make it difficult for legal aid plans to consider the provision of services in both official languages as a priority.

5.4 Avenues for improvement

As illustrated in the previous sections, many factors influence the provision of legal aid services in the official language of the minority. While legal aid plans have control over some of these factors, others are more difficult to address. For instance, a legal aid plan may decide to actively offer its services in the official language of the minority, but may not be able to find bilingual lawyers willing to do legal aid work.

Based on the obstacles identified by key informants, a number of strategies can be developed to improve or expand the provision of legal aid services in the official language of the minority. The

following strategies are aimed at issues that have a direct impact on clients:

- Public information materials being available in the official language of the minority (publications, brochures, posters, etc) so that official language minority groups are able to obtain basic information on legal aid services, regardless of the capacity of provincial plans to provide services in both official languages.

- Key players in the criminal justice system who first encounter accused, and who may have a significant impact on their access to justice, understanding the language needs of official language minorities.

- Criminal justice professionals throughout the system (police, lawyers, Crown, judiciary, and Legal Aid staff) being sensitized to the importance of services being made available in both official languages.

Additional avenues for improvement are directed at legal aid services:

- Language training provided to lawyers who may have a basic knowledge of the minority official language but are unfamiliar with the legal terminology required to provide services in that language – both oral and written.[77]

- Language training for paralegals, legal secretaries, and others who support lawyers in their work.

- Appropriate resources and tools made available to legal aid plans generally, and lawyers specifically, to enable them to provide services in the official language of the minority – including reference materials and publications, computer programs, software, etc.

- Recognizing the role that various *Associations des juristes d'expression française* can play in the expansion of French legal aid services outside Québec. These associations are currently grouped within a national *Fédération des associations de juristes d'expression française de common law*. Developing a solid working relationship with legal aid plans could facilitate and encourage the provision of services in French. In jurisdictions without an *Association des juristes d'expression française*, there are other

[77] There are several organizations in Canada that provide specialized legal training.

francophone community organizations that could collaborate with legal aid plans.

Within Québec, there is a valuable network of anglophone organizations. Legal aid offices can work in collaboration with the various organizations to improve and expand on legal aid services provided in English.

Other barriers identified by key informants, while having a significant impact on the provision of legal aid services in the official language of the minority, are concerned with the legal aid system generally. Therefore, any strategies to overcome these barriers would affect the legal aid system as a whole. These include the following:

- Legal aid work, compared to other areas of law, is not financially rewarding. As a result, it can be difficult to maintain Legal Aid staff, particularly bilingual staff. Therefore, the current remuneration of staff lawyers is a potential barrier to the recruiting of bilingual candidates. As emphasized in the report, this impact varies among jurisdictions. While provincial prosecutors in Ontario benefit from higher salary ranges than staff duty counsel, many other jurisdictions offer similar salary ranges to both provincial prosecutors and staff Legal Aid lawyers. It is possible, however, that bilingual lawyers will find more lucrative positions in the private sector or in other provincial ministries or federal departments (including federal prosecutions).

- In judicare or mixed models, the tariff structure may have the same type of impact as that of salary ranges in staff legal aid models. Tariffs that are perceived as being too low may discourage lawyers, including bilingual lawyers, from doing legal aid work.

An examination of the overall findings of the research leads to the conclusion that there are a number of issues and barriers that can be addressed with additional resources. Federal funding can be targeted in two ways:

- First, funding can be targeted toward those considerations directly related to the provision of legal aid services in the official language of the minority. The federal government can support language training initiatives, publication of materials in the two official languages, and the development of legal resources and tools in both official languages. The federal government can also provide direct support to initiatives aimed at sensitizing criminal justice

professionals to the needs of official language groups and at building linkages between the different organizations and associations involved in official language issues.

- Second, funding can address some of the institutional barriers that relate to the entire system and have a definite impact on the provision of services in the official language of the minority, such as the tariff structure and the remuneration of staff lawyers.

Inevitably, some impediments to the provision of legal aid services in both official languages cannot be addressed through additional funding. As previously mentioned, legal aid work is highly specialized, demanding, and challenging. Therefore, difficulties arise in finding and maintaining lawyers who speak both official languages and who are willing to work for legal aid in the area of criminal law.

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APPENDIX A
INTERVIEW GUIDE

LEGAL AID MANAGERS AND STAFF

INTERVIEW GUIDE

Legal Aid and Official Languages in Canada
Legal Aid Managers and Staff

The Department of Justice Canada has recently launched a nation-wide study on the use of both official languages in the provision of legal aid services. The objectives of this study are:

- To identify the policies and practices that are currently in place within legal aid plans regarding the provision of legal aid services in both official languages.
- To identify the difficulties that clients may encounter in accessing legal aid services in their official language of choice.
- To determine the increased level of service that may be required in order to ensure access to legal aid services in both official languages, and the cost of these increased levels of service.

While not excluding issues surrounding civil and family matters, the focus of this research is on issues pertaining to criminal matters.

The following questions cover issues relating to the legal aid services currently offered in the official language of the minority, the need for these services, the challenges to the provision of these services and possible initiatives and their associated costs.

Services offered in the official language of the minority

1. Are there any practices or policies (formal and informal) in place for the provision of legal aid services in the language of the minority? Please describe. To which of the following legal aid services do these policies apply:
    - Duty counsel?
    - *Brydges* representation?
    - Representation for criminal matters?
    - Representation for civil and family matters?
    - Information services/Information line?
    - Advice and assistance?
    - Other?
2. In what languages is information offered on the Internet? Information line?
3. How are inquiries for services in the language of the minority handled (over the phone, in person/reception, information line)?

a) When someone speaks in the language of the minority?

b) When someone speaks in the language of the majority but asks for services in the language of the minority?

4. Please describe the step-by-step procedure followed to provide clients with legal aid services in the official language of the minority. How accessible would you say these services are?

5. In your opinion, what are the gaps in the range of legal aid services and resources available in the official language of the minority? Can you identify gaps that should be addressed in priority?

Need for legal aid services in the official language of the minority

6. For each of the following services, what would you say is the level of need (percentage of cases where a client requests services in the language of the minority, percentage of francophone clients, etc) for legal aid services in the language of the minority:

   - Duty counsel?
   - *Brydges* representation?
   - Criminal matters?
   - Family and civil matters?
   - Representation at trial?
   - Information services/Information line?
   - Advice and assistance?
   - Other?

7. In what ways would you say the provision of legal aid services in the language of the minority might be beneficial to clients (understanding of procedures, communication between lawyer and client, results of case, etc)? What are the consequences, if any, of not providing legal aid services in both official languages?

8. At this point in time, how important is it to the legal aid system in your province that clients receive services in their official language of choice? Has this issue been addressed internally?

9. Have you been approached on this issue by community organizations or advocacy groups? Have you received client complaints?

Challenges to the provision of legal aid services in both official languages

10. Based on your experience, what are the barriers that may prevent the provision or expansion of legal aid services in the official language of choice(systemic barriers,

linguistic barriers, financial barriers, etc)? Which ones do you feel should be addressed in priority?

11. Based on the legal aid delivery model in your province (staff lawyers vs. judicare), what would you say are the challenges that exist in relation to the provision or expansion of legal aid services in the official language of the minority(staffing challenges, model requirements, budget constraints, etc)?

Initiatives and Associated costs

12. In your opinion, what changes, if any, should be made in order to ensure that legal aid services be available in the official language of choice?

13. If changes are required, what is the nature of the costs for these proposed modifications (service delivery sites, personnel, infrastructure, staffing, training, etc.)? For each proposed change, can you provide an estimate (range, percentage or dollar value) of the additional funding required and the possible sources of this funding (provincial, federal, other sources)?

14. Based on your experience, if additional funding was provided for your proposed changes, what would you say are the most important challenges in implementing these changes?

Conclusion

15. Do you have any other comments?

Your participation is greatly appreciated!

APPENDIX B
INTERVIEW GUIDE

LAWYERS, CROWN AND JUDICIARY

INTERVIEW GUIDE

Legal Aid and Official Languages in Canada
Lawyers, Crown and Judiciary.

The Department of Justice Canada has recently launched a nation-wide study on the use of both official languages in the provision of legal aid services. The objectives of this study are:

- To identify the policies and practices that are currently in place within legal aid plans regarding the provision of legal aid services in both official languages.
- To identify the difficulties that clients may encounter in accessing legal aid services in their official language of choice.
- To determine the increased level of service that may be required in order to ensure access to legal aid services in both official languages, and the cost of these increased levels of service.

While not excluding issues surrounding civil and family matters, the focus of this research is on issues pertaining to criminal matters.

The following questions cover issues relating to the legal aid services currently offered in the official language of the minority, the need for these services, the challenges to the provision of these services, and possible initiatives and their associated costs.

Services offered in the official language of the minority

1. Based on your experience, how would you describe the overall capacity of legal aid to provide services in the official language of the minority? Are you aware of any services provided in the official language of the minority in any of the following areas:
    - Duty counsel?
    - *Brydges* representation?
    - Representation for criminal matters?
    - Representation for civil and family matters?
    - Information services/Information line?
    - Advice and assistance?
    - Other?
2. In your opinion, what are the gaps in the range of legal aid services and resources available in the official language of the minority? Do you feel that some of these gaps should be addressed in priority? If so, which one(s)?

Need for legal aid services in the official language of the minority

3. In your opinion, how important is it that legal aid clients receive services in their official language of choice? How would you describe the impact on the court system of not providing this service (delays in procedures, translation costs, etc)?

4. In what ways would you say the provision of legal aid services in the language of the minority might be beneficial to clients (understanding of procedures, communication between lawyer and client, results of case, etc)? What are the consequences on the individuals, if any, of not providing legal aid services in both official languages?

Challenges to the provision of legal aid services in both official languages

5. Can you identify barriers that may prevent the provision or expansion of legal aid services in the official language of choice (systemic barriers, linguistic barriers, financial barriers, etc)?

6. Based on the legal aid delivery model in your province (staff lawyers vs. judicare), what would you say are the challenges that exist in relation to the provision or expansion of legal aid services in the official language of the minority (staffing challenges, model requirements, budget constraints, etc)?

Initiatives and Associated costs

7. In your opinion, what changes, if any, should be made in order to ensure that legal aid services be available in the official language of choice?

8. Based on your experience, if additional funding was provided for your proposed changes, what would you say are the most important challenges in implementing these changes?

Conclusion

9. Do you have any other comments?

Your participation is greatly appreciated!

APPENDIX C
INTERVIEW GUIDE

REPRESENTATIVES OF LAWYERS SERVING OFFICIAL LANGUAGE GROUPS

INTERVIEW GUIDE

Legal Aid and Official Languages in Canada
Representatives of lawyers serving official language groups

The Department of Justice Canada has recently launched a nation-wide study on the use of both official languages in the provision of legal aid services. The objectives of this study are:

- To identify the policies and practices that are currently in place within legal aid plans regarding the provision of legal aid services in both official languages.
- To identify the difficulties that clients may encounter in accessing legal aid services in their official language of choice.
- To determine the increased level of service that may be required in order to ensure access to legal aid services in both official languages, and the cost of these increased levels of service.

While not excluding issues surrounding civil and family matters, the focus of this research is on issues pertaining to criminal matters.

The following questions cover issues relating to the legal aid services currently offered in the official language of the minority, the need for these services, the challenges to the provision of these services, and possible initiatives and their associated costs.

Introduction

[Questions 1 and 2 are applicable to jurisdictions with a judicare delivery model]

1. To your knowledge, what is the extent to which members of your association are involved in providing legal aid services (percentage of members, cases of which you are aware, etc)?

2. Can you comment on the general perception of your members toward the provision of legal aid services? Do they generally carry out legal aid mandates? If not, why?

[Question 3 is applicable to jurisdictions with a staff delivery model]

3. In general, what is the capacity of Legal Aid offices in providing services in the official language of the minority? (Any particular regions or areas? Any particular types of services?)

4. Has your organization currently been involved in any new initiatives or activities relating to the provision of legal aid services in the official language of the minority? If yes, please describe these activities.

Legal aid services in the official language of the minority

5. Are you aware of any policies, formal or informal, in place for the provision of legal aid services in the language of the minority? If yes, please describe.

6. To your knowledge, what legal aid services and resources are currently available in the official language of the minority?

7. What are the most significant gaps in the range of legal aid services and resources available in the official language of the minority?

8. Are you aware of the procedure that must be undertaken by a client in order to obtain legal aid services in the official language of the minority? If yes, please describe. In your opinion, how accessible are these services? Please explain.

Need for legal aid services in the official language of the minority

9. How would you describe the need for services in the language of the minority in the following areas:

   - *Brydges* representation?
   - Duty counsel?
   - Advice and assistance?
   - Representation in criminal matters?
   - Representation in family and civil matters?
   - Information requests/Information line?
   - Any other areas?

   Of all these various areas, can you identify those that should be addressed in priority?

10. Can you recommend a strategy or avenues to be pursued to ensure a greater access for legal aid clients to services in their official language of choice?

11. In your opinion, what importance do clients place on receiving legal services in their official language of choice? What do you think is the importance of actively offering services in the official language of the minority?

12. In what ways would you say the provision of legal aid services in the language of the minority might be beneficial to legal aid clients (understanding of procedures, communication between lawyer and client, results of case, etc)? What are the consequences, if any, of not providing legal aid services in both official languages?

Challenges to the provision of legal aid services in both official languages

13. Please describe the main barriers that may prevent the provision or expansion of legal aid services in the official language of choice (systemic barriers, linguistic barriers, financial barriers, etc).

14. Based on the legal aid delivery model in your province (staff lawyers vs. judicare), what would you say are the challenges that exist in relation to the provision or expansion of legal aid services in the official language of the minority (staffing, model requirements, budget constraints, etc)?

15. In your opinion, what is the nature of the changes that should be made in order to ensure that legal aid services be available in the official language of choice? In what ways can identified barriers and challenges be overcome?

Conclusion

16. Do you have any other comments?

Your participation is greatly appreciated!

APPENDIX D
INTERVIEW GUIDE

COMMUNITY ORGANIZATIONS, ADVOCACY GROUPS AND FAMILY SERVICES

INTERVIEW GUIDE

Legal Aid and Official Languages in Canada
Community Organizations, Advocacy Groups and Family Services

The Department of Justice Canada has recently launched a nation-wide study on the use of both official languages in the provision of legal aid services. The objectives of this study are:

- To identify the policies and practices that are currently in place within legal aid plans regarding the provision of legal aid services in both official languages.
- To identify the difficulties that clients may encounter in accessing legal aid services in their official language of choice.
- To determine the increased level of service that may be required in order to ensure access to legal aid services in both official languages, and the cost of these increased levels of service.

The following questions cover issues relating to the legal aid services currently offered in the official language of the minority, the need for these services, the challenges to the provision of these services and possible initiatives and their associated costs.

Background

1. Please provide a brief description of the organization in which you work or the group with which you are involved (what services do you provide, are you involved in advocacy, etc).
2. Has your organization or group ever been involved or collaborated with the legal aid services of your province? If so, please describe these activities.

Legal aid services offered in the official language of the minority

Legal aid may cover a range of services relating to civil, family and criminal matters. While not excluding the first two, the focus of this research is on issues pertaining to criminal matters. This may include the following services:

- Full representation in court.
- *Brydges* representation. Following a Supreme Court decision, all accused must be informed of the right to counsel immediately upon arrest and all persons detained have the right to immediate legal counsel regardless of financial circumstance. This has resulted in legal aid plans establishing a 24-hour, on-call service for arrestees requiring legal assistance and representation.
- Duty counsel. This service is provided to individuals who are going to court but do not have a lawyer; lawyers at the courthouse may represent the individual for his/her court appearance. Duty counsel provides short-term legal assistance.

- Legal information (through call centres, clinics, internet, etc).

3. To your knowledge, are there any legal aid services and resources that are currently available in the official language of the minority? If so, how did you become aware that these services were offered in both French and English?

4. In your opinion, what are the most significant gaps in the range of legal aid services and resources available in the official language of the minority?

5. In general, how would you describe the capacity of the legal aid services plan in your province to provide services in both official languages?

6. Have any of your clients ever required legal aid services? If yes, are you aware of their experiences in terms of receiving legal aid services in the official language of the minority?

7. Are you aware of the procedure that must be undertaken by a client in order to obtain legal aid services in the language of the minority? If yes, please describe. In your opinion, how accessible are these services? Please explain.

Need for legal aid services in the official language of the minority

8. What are the main issues with which your clients may require the assistance of legal aid services (child and family services, divorce, custody, child support, criminal matters, etc)?

9. How would you describe the need for services in the language of the minority in the following areas:

   - *Brydges* representation?
   - Duty counsel?
   - Advice and assistance?
   - Representation in criminal matters?
   - Representation in family and civil matters?
   - Information requests/Information line?
   - Any other areas?

   Of all these various areas, can you identify those that should be addressed in priority?

10. How can clients be best informed of the availability of services in the official language of the minority?

11. In your opinion, what importance do clients place on receiving services in their official language of choice? What do you think is the importance of actively offering services in the official language of the minority?

12. Can you recommend a strategy or avenues to be pursued to ensure a greater access for legal aid clients to services in their official language of choice?

13. In what ways would you say the provision of legal aid services in the language of the minority might be beneficial to your clients (understanding of procedures, communication between lawyer and client, results of case, etc)? What are the consequences, if any, of not providing legal aid services in both official languages?

Challenges to the provision of legal aid services in both official languages

14. Based on your experience, what are the barriers that may prevent the provision or expansion of legal aid services in the official language of choice (systemic barriers, linguistic barriers, financial barriers, etc)? Which ones do you feel should be addressed in priority?

15. In your opinion, what changes can be made in order to ensure that legal aid services be available in the official language of choice?

Conclusion

16. Do you have any other comments?

Your participation is greatly appreciated!

APPENDIX E
INTERVIEW GUIDE

CLIENTS OF LEGAL AID SERVICES

(not used – replaced by survey in Appendix F)

INTERVIEW GUIDE
CLIENTS OF LEGAL AID SERVICES

1. Is French (English) your mother tongue? Do you normally use French (English) at home?

2. When you first needed legal aid services, what did you do – did you phone a special legal aid number or did you go to a Legal Aid office or clinic?

3. (If you went to an office or clinic) in what language did the receptionist discuss legal aid services with you? Was it the language of your choice? If no, did you ask for someone to speak with you in French (English)? If yes, did you then have someone speak with you in your language? If not, were you given any reason?

4. (If you phoned a 1-800 number or other special legal aid line) how did you know about it? Were you given this information in French (English)? When you made the phone call, did someone speak to you in French (English)? If no, did you ask for someone to speak with you in your language? If yes, did you then have someone speak with you in your language? If not, were you given any reason?

5. Do you feel comfortable asking for services in your language if they are not offered to you first? If no, please explain.

QUESTIONS 4a TO 4c APPLY ONLY TO CRIMINAL MATTERS

4a. When you were arrested, did you have your own lawyer or did you need a lawyer from legal aid? If you needed a legal aid lawyer, were you able to get one who spoke French (English)? If yes, what did you do to get a lawyer that spoke French (English)? If no, why not? Do you think it is important that the lawyer who gives you advice when you are just arrested speaks to you in the language of your choice? Please explain your answer.

4b. When you went to court for your first appearance, did you have your own lawyer? If not, was there a lawyer available who could talk to you in French (English)? Did you ask for a lawyer who could speak French (English)? If yes, did you then get one? Do you think it is important that the lawyer who is on duty at the court speaks to you in the language of your choice? Please explain your answer.

4c. When you asked legal aid for a lawyer to represent you at your trial, were you given a lawyer who could speak French (English)? Did you ask for a lawyer who could speak French (English)? Did legal aid then give you a lawyer who could speak French (English)? If no, why not? Do you think it is important that the lawyer who represents you at your trial speaks to you in the language of your choice? Please explain your answer.

QUESTIONS 5a AND 5b APPLY ONLY TO FAMILY LAW MATTERS
(not available in all jurisdictions)

5a. When you needed help with your family law case, was the lawyer on duty able to speak to you in your language? Did you ask for a lawyer who could speak French (English)? Did you get a lawyer who could speak your language? If no, why not? Do you think it is important that the lawyer who is on duty at the court speaks to you in the language of your choice? Please explain your answer.

5b. When you asked legal aid for a lawyer to represent you at your trial, were you given a lawyer who could speak French (English)? Did you ask for a lawyer who could speak French (English)? Did legal aid then give you a lawyer who could speak French (English)? If no, why not? Do you think it is important that the lawyer who represents you at your trial speaks to you in the language of your choice? Please explain your answer.

6. Was there any additional information you needed from legal aid, for example, through the Internet or from pamphlets? Were you able to get this information in the language of your choice? If not, did you have trouble understanding the information?

7. Overall, were you able to get all the legal information and advice that you needed? Do you think it would have made a difference if you were (not) able to get services in the language of your choice? Please explain your answer.

APPENDIX F
SURVEY OF CLIENTS AND POTENTIAL CLIENTS

Legal Aid and Official Languages
SURVEY FOR INTERVIEWS WITH ANGLOPHONES IN QUÉBEC

Hello, my name is _____, with Prairie Research Associates. We are an independent research firm doing research for the Department of Justice Canada on legal services in the two official languages. This survey should only take about 5 minutes of your time.

Continue	*1*
Schedule call back	*2*
End survey	*3*
Don't know	*8*
No response	*9*

SECTION A - BACKGROUND QUESTIONS

1. Is English your first language?

Yes	1
No	2
No response	9

[IF NO, END SURVEY.]

2. Do you usually speak English at home?

Yes	1
No	2
No response	9

3. How would you describe your neighbourhood? [READ OPTIONS]

Mostly francophone	1
Mostly anglophone	2
Equally French and English	3
Don't know	8
No response	9

4. How would you describe your ability to communicate in French? [READ OPTIONS]

Excellent	1
Good	2
Limited	3
Can't communicate	4
No response	9

SECTION B – PREVIOUS USE OF LEGAL AID SERVICES

5. Have you ever needed any legal services of any kind?

Yes	1
No	2 [SKIP TO Q. 22]
Don't know	8
No response	9

6. Where did you go to get the legal services that you needed?

Legal Aid Office	1
Private lawyer	2 [SKIP TO Q. 22]
Community Legal Clinic	3 [SKIP TO Q. 22]
Other (VERBATIM)	[SKIP TO Q. 22]

7. When you applied for legal aid, did the Legal Aid staff speak to you in English?

Yes	1
No	2 [SKIP TO Q. 9]
Don't know	8
No response	9

8. Did you have to ask to speak to someone in English?

Yes	1 [SKIP TO Q. 10]
No	2 [SKIP TO Q. 10]
Don't know	8
No response	9

9. Did you ask to speak to someone in English?

Yes	1
No	2
Don't know	8
No response	9

10. Did your lawyer speak English?

Yes	1
No	2 [SKIP TO Q. 12]
Don't know	8
No response	9

11. Did you ask or were you offered a lawyer who spoke English?

Asked	1 [SKIP TO Q. 13]
Offered	2 [SKIP TO Q. 13]
Don't know	8
No response	9

12. Would you have preferred to have a lawyer who spoke English?

Yes	1
No	2

13. Legal Aid may also offer other services including a toll-free information line. Have you used this service?

Yes	1
No	2 [SKIP TO Q. 16]
Don't know	8 [SKIP TO Q. 16]
No response	9 [SKIP TO Q. 16]

14. Was this service provided to you in English?

Yes	1
No	2 [SKIP TO Q. 16]
Don't know	8
No response	9

15. Did you ask or was this service in offered in English?

Asked	1
Offered	2
Don't know	8
No response	9

16. Another service sometimes offered by legal aid is a lawyer at the court who can help you with your first appearance. Have you used this service?

Yes	1
No	2 [SKIP TO Q. 19]
Don't know	8 [SKIP TO Q. 19]
No response	9 [SKIP TO Q. 19]

17. Was this service provided to you in English?

Yes	1
No	2 [SKIP TO Q. 19]
Don't know	8
No response	9

18. Did you ask or was this service offered in English?

Asked	1
Offered	2
Don't know	8
No response	9

19. Have you used any other legal aid services?

Yes	1
Please specify: _____	
No	2 [SKIP TO Q. 22]
Don't know	8 [SKIP TO Q. 22]
No response	9 [SKIP TO Q. 22]

20. Were these services provided to you in English?

Yes	1
No	2 [SKIP TO Q. 22]
Don't know	8
No response	9

21. Did you ask or were you offered these services in English?

Asked	1
Offered	2
Don't know	8
No response	9

SECTION C – PREFERRED LANGUAGE FOR LEGAL ASSISTANCE

22. In general, if you had a legal problem and needed to go to court, in what language would you want the court hearing or trial to be held? [READ OPTIONS]

English	1
French	2
Either one	3
Don't know	8
No response	9

23. Is it important for you to have a lawyer speak to you in English?

Yes	1
No	2
Don't know	8
No response	9

24. I will now read you three statements. Please tell me whether you agree or not with these statements [READ OPTIONS]:

a) "I would choose a lawyer to help me because he/she speaks English."

Strongly agree	1
Somewhat agree	2
No opinion	3
Somewhat disagree	4
Strongly disagree	5
No response	9

b) "I would choose a lawyer because of his/her reputation even if the lawyer only speaks French."

Strongly agree	1
Somewhat agree	2
No opinion	3
Somewhat disagree	4
Strongly disagree	5
No response	9

c) "I don't mind my case going before the court in French as long as I can speak to my lawyer in English."

Strongly agree	1
Somewhat agree	2
No opinion	3
Somewhat disagree	4
Strongly disagree	5
No response	9

25. If there were long delays in contacting a lawyer who could speak English, would you:

Contact a French-speaking lawyer	1
If available, use the services of an interpreter	2
Continue to wait	3
Don't know	8
No response	9

This ends our survey. Could you please tell me your postal code?
(VERBATIM)

I would like to thank you for taking the time to answer these questions; we greatly appreciate it.